

United States ⁸⁻
Circuit Court of Appeals

For the Ninth Circuit.

BEN A. BOST,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division

FILED

OCT 28 1938

PAUL P. O'BRIEN,

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San Francisco, Calif.

Attorney for Plaintiff and Appellee.

No. 25961-S.

IN THE SOUTHERN DIVISION OF THE
UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALI-
FORNIA.

First Count: (18 U. S. C. A. Sec. 80);

In the March 1937 term of said Division of said District Court, the Grand Jurors thereof, on their oaths present:

I. That BEN A. BOST on or about the 6th day of April, 1934, at San Francisco, California, in said Division and District, knowingly and wilfully falsified, concealed and covered up by a trick, scheme and device, a material matter within the

jurisdiction of a department and agency of the United States, all as hereinafter set forth.

II. Under the regulations duly issued and promulgated by the Secretary of the Treasury on January 31, 1934, under and pursuant to the authorization given under the provisions of the "Gold Reserve Act of 1934", it was at all times herein mentioned provided that the United States Mints shall not purchase any gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof and which gold shall not, at the time of its purchase, have [1*] entered into monetary or industrial use, unless such gold is accompanied by a properly executed affidavit in the form therein prescribed. Under said regulations it was at all of said times further provided therein that persons offering gold of the kind above described to the Mint for sale, shall execute and present to the Mint with said gold so offered, an affidavit on a form prescribed by said Regulations; that in the case of gold so tendered for sale and so deposited by persons who have recovered said gold by mining or panning, said regulations require that the affidavit to be used and executed is an affidavit therein referred to as being on Form "TG 19" which said form is supplied by the Mint to all persons who offer such gold to a United States Mint for sale. That said form of affidavit "TG 19" provides that all persons who offer such gold to any United States Mint for sale shall set forth therein

*Page numbering appearing at the foot of page of original certified Transcript of Record.

certain information, including the source of said gold and the name and location of the mine or placer deposit from which said gold has been recovered.

III. That on or about the 6th day of April, 1934, said defendant requested of the Mint of the United States, located at San Francisco, California, which was then and there an agency of the Treasury Department of the United States, that it purchase certain gold that was then and there tendered by him to said Mint for sale; that for the purpose of inducing said Mint to purchase said gold, and in purported compliance with said regulations above mentioned, said deposit of gold was accompanied by an affidavit executed by said defendant, a copy of which affidavit is hereunto annexed, marked Exhibit "A", and made a part hereof; that in and by the terms of said affidavit, said defendant wilfully, knowingly and unlawfully, and contrary to his oath in said affidavit taken, declared, certified and swore to certain material matters which were not [2] true and which he did not believe to be true when he swore to said affidavit, to-wit: That he was the owner of a mining claim called the "Lucky Gravel" claim, and that the source of said gold so tendered and deposited was "Lucky Gravel claim, mostly small nuggets", and that said gold had been recovered from said claim, which claim it was stated in said affidavit was located in Cougar Canyon, Eldorado County, California, whereas in truth and in fact as said defendant then and there well knew,

he was not the owner of any mining claim in said County and State, known as or called the Lucky Gravel claim, and whereas in truth and in fact the source of said gold was not said Lucky Gravel claim, and said gold had not been recovered from said alleged claim, which facts said defendant at all times well knew.

Second Count: (18 U. S. C. A., 80.)

And the said Grand Jurors on their oaths aforesaid, do further present:

I. That Ben A. Bost, on or about the 17th day of May, 1934, at San Francisco, California, in said Division and District, knowingly and wilfully falsified, concealed and covered up by a trick, scheme and device, a material matter within the jurisdiction of a department and agency of the United States, all as hereinafter set forth.

II. The Grand Jurors do hereby adopt the allegations of paragraph II of the First Count of this Indictment and do hereby make the same a part hereof as fully as if the same were set out herein.

III. That on or about the 17th day of May, 1934, said defendant requested of the Mint of the United States, located at San Francisco, California, which was then and there an agency of the Treasury Department of the United States, that [3] it purchase certain gold that was then and there tendered by him to said Mint for sale: that for the purpose of inducing said Mint to purchase said gold, and in purported compliance with said regulations above

mentioned, said deposit of gold was accompanied by an affidavit executed by said defendant, a copy of which affidavit is hereunto annexed, marked Exhibit "B", and made a part hereof; that in and by the terms of said affidavit, said defendant wilfully, knowingly and unlawfully, and contrary to his oath in said affidavit taken, declared, certified and swore to certain material matters which were not true and which he did not believe to be true when he swore to said affidavit, to-wit: That he was the owner of a mining claim called "The Lucky Gravel Claim," and that the source of said gold so tendered and deposited was "gravel gold, small nuggets", and that said gold had been recovered from said claim, which claim it was stated in said affidavit was located in Cougar Canyon, El Dorado County, California, whereas in truth and in fact, as said defendant then and there well know, he was not the owner of any mining claim in said County and State, known as or called "The Lucky Gravel Claim", and whereas in truth and in fact the source of said gold was not said "Lucky Gravel Claim", and said gold had not been recovered from said alleged claim, which said facts said defendant at all times well knew.

Third Count: (18 U. S. C. A., 80.)

And the said Grand Jurors on their oaths aforesaid do further present:

I. That Ben A. Bost, on or about the 18th day of April, 1935, at San Francisco, California, in said Division and District, knowingly and wilfully falsi-

fied concealed and covered up by a trick, scheme and device, a material matter within the jurisdiction of a [4] department and agency of the United States, all as hereinafter set forth.

II. The Grand Jurors do hereby adopt the allegations of paragraph II of the First Count of this Indictment and do hereby make the same a part hereof as fully as if the same were set out herein.

III. That on or about the 18th day of April, 1935, said defendant requested the Mint of the United States, located at San Francisco, California, which was then and there an agency of the Treasury Department of the United States, that it purchase certain gold that was then and there tendered by him to said Mint for sale; that for the purpose of inducing said Mint to purchase said gold, and in purported compliance with said regulations above mentioned, said deposit of gold was accompanied by an affidavit executed by said defendant, a copy of which affidavit is hereunto annexed, marked Exhibit "C", and made a part hereof; that in and by the terms of said affidavit, said defendant wilfully, knowingly, and unlawfully, and contrary to his oath in said affidavit taken, declared, certified and swore to certain material matters which were not true and which he did not believe to be true when he swore to said affidavit, to-wit: That he was the owner of a mining claim called "The Lucky Gravel Claim", and that the source of said gold so tendered and deposited was said "Lucky Gravel Claim", and that said gold had been recovered from said claim

in Cougar Canyon, El Dorado County, California, whereas in truth and in fact as said defendant then and there well knew, he was not the owner of any mining claim in said County and State, known as or called "The Lucky Gravel Claim", and whereas in truth and in fact the source of said gold was not said "Lucky Gravel Claim", and said gold had not been recovered from said alleged claim, which said facts said defendant at all times well knew. [5]

Fourth Count: (18 U. S. C. A., 80.)

And the said Grand Jurors on their oaths aforesaid, do further present:

I. That Ben A. Bost, on or about the 20th day of January, 1935, at San Francisco, California, in said Division and District, knowingly and wilfully falsified, concealed and covered up by a trick, scheme and device, a material matter within the jurisdiction of a department and agency of the United States, all as hereinafter set forth.

II. The Grand Jurors do hereby adopt the allegations of paragraph II of the First Count of this Indictment, and do hereby make the same a part hereof as fully as if the same were set out herein.

III. That on or about the 20th day of January, 1935, said defendant requested of the Mint of the United States, located at San Francisco, California, which was then and there an agency of the Treasury Department of the United States, that it purchase certain gold that was then and there tendered by him to said Mint for sale; that for the purpose

of inducing said Mint to purchase said gold, and in purported compliance with said regulations above mentioned, said deposit of gold was accompanied by an affidavit executed by said defendant, a copy of which affidavit is hereunto annexed, marked Exhibit "D", and made a part hereof; that in and by the terms of said affidavit, said defendant wilfully, knowingly and unlawfully, and contrary to his oath in said affidavit taken, declared, certified, and swore to certain material matters which were not true and which he did not believe to be true when he swore to said affidavit, to-wit: that he was the owner of a mining claim called "The Lucky Gravel Claim," and that the [6] source of said gold so tendered and deposited was "gravel, some nuggets", and that said gold had been recovered from said "Lucky Gravel Claim" in Cougar Canyon, El Dorado County, California, whereas in truth and in fact, as said defendant then and there well knew, he was not the owner of any mining claim in said County and State, known as or called "The Lucky Gravel Claim", and whereas in truth and in fact the source of said gold was not said "Lucky Gravel Claim" and said gold had not been recovered from said alleged claim.

Fifth Count: (18 U. S. C. A., 80.)

And the said Grand Jurors on their oaths aforesaid, do further present:

I. That Ben A. Bost, on or about the 27th day of July, 1934, at San Francisco, California, in said

Division and District, knowingly and wilfully falsified, concealed and covered up by a trick, scheme and device, a material matter within the jurisdiction of a department and agency of the United States, all as hereinafter set forth.

II. The Grand Jurors do hereby adopt the allegations of paragraph II of the First Count of this Indictment and do hereby make the same a part hereof as fully as if the same were set out herein.

III. That on or about the 27th day of July, 1934, said defendant requested of the Mint of the United States, located at San Francisco, California, which was then and there an agency of the Treasury Department of the United States, that it purchase certain gold that was then and there tendered by him to said Mint for sale; that for the purpose of inducing said Mint to purchase said gold, and in purported compliance with said regulations above mentioned, said deposit of gold [7] was accompanied by a purported affidavit which purported to have been executed by said defendant, a copy of which affidavit is hereunto annexed, marked Exhibit "E" and made a part hereof, that in and by the terms of said purported affidavit, said defendant wilfully, knowingly and unlawfully declared and certified and purported to swear to certain material matters which were not true, to-wit: that he was the owner of a mining claim called "The Lucky Gravel Claim" in Cougar Canyon, El Dorado County, California, and that the source of said gold so tendered and deposited was "gravel", and that said gold had

been recovered from said claim, whereas in truth and in fact, as said defendant then and there well knew, he was not the owner of any mining claim in said County and State, known as or called "The Lucky Gravel Claim", and whereas in truth and in fact, the source of said gold was not said "Lucky Gravel Claim," and said gold has not been recovered from said alleged claim.

H. H. McPIKE,

United States Attorney.

Approved as to form:

RMcW. [8]

EXHIBIT "A"

7779

TG-19

Treasury Department
Office of the Secretary.

AFFIDAVIT ACCOMPANYING DEPOSITS
BY PERSONS WHO HAVE RECOVERED
GOLD BY MINING OR PANNING.

State of California
County of Nevada—ss.

I, Ben A. Bost (name) of Nevada City, California (address) being first duly sworn on oath depose and say that I am the Owner of Lucky Gravel Claim (title of officer executing affidavit) of Ben A Bost, Nevada City, Calif. (name and address of depositor) the depositor of the gold described below; that I have personal knowledge of all the

facts concerning said gold as set forth in this affidavit;

A. Name and address of depositor is Ben A. Bost, Nevada City, California.

B. Description of shipment of gold delivered is one bar gold bullion.

C. Net weight of this shipment in troy ounces is 102.55.

D. Assay or estimated fineness in parts per 1000 is 850.

E. Content of fine gold in troy ounces is 87.70 (estimate if necessary).

F. The U. S. Mint or Assay office to which shipped is Mint at San Francisco.

G. The date shipped is April 5, 1934.

H. The source of the gold is Lucky Gravel Claim mostly small nuggets (State whether ore, tailing, or placer, etc.).

I. The tons of ore or tailings, or cubic yards of gravel from which this shipment was recovered are about 200 cubic yards.

J. The period within which the gold was taken from the mine or placer deposit is October 1, 1933 to March 31, 1934.

K. The name and location of mine or placer deposit from which the gold was recovered is Lucky Gravel Claim, Cougher Canyon, Eldorado Co., Calif.

L. The date such gold was first melted into crude metallic gold suitable for refining at a gold refinery is April 5, 1934.

M. The date such gold was converted into the form in which presented is April 5, 1934.

The gold referred to herein was recovered by this depositor by mining or panning and no part thereof has been held by this depositor or to the best of my knowledge, information and belief, by any other person at any time in noncompliance with the Act of March 9, 1933, any executive order or orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any regulations prescribed under such order or license issued pursuant thereto, or in noncompliance with the Gold Reserve Act of 1934, or any regulations or license issued thereunder. No part of such gold has ever entered into monetary or industrial use.

I make this affidavit for the purpose of inducing the purchase by a United States Mint or assay Office of gold described herein under and in accordance with the provisions of the Gold Reserve Act of 1934 and the regulations issued thereunder.

BEN A. BOST

By.....

Subscribed and sworn to before me this 5th day of April 1934.

[Seal]

W. L. MOBLEY

(Officer administering oath.)

My commission expires Nov. 7th, 1934.

(To be executed in duplicate.) [9]

EXHIBIT "B"

11630

TG-19

Treasury Department

Office of the Secretary.

AFFIDAVIT ACCOMPANYING DEPOSITS
BY PERSONS WHO HAVE RECOVERED
GOLD BY MINING OR PANNING.

State of California

County of Nevada—ss.

I, Ben A. Bost (name) of Nevada City, California (address) being first duly sworn on oath depose and say that I am the owner of Lucky Gravel Claim (title of officer executing affidavit) of Ben A. Bost, Nevada City, Calif. (name and address of depositor) the depositor of the gold described below; that I have personal knowledge of all the facts concerning said gold or set forth in this affidavit;

A. Name and address of depositor is Ben A. Bost, Nevada City, California.

B. Description of shipment of gold delivered is one bar gold bullion.

C. Net weight of this shipment in troy ounces is 79.50.

D. Assay or estimated fineness in parts per 1000 is 850.

E. Content of fine gold in troy ounces is 67.30 (estimate if necessary).

F. The U. S. Mint or Assay office to which shipped is Mint at San Francisco.

G. The date shipped is May 16, 1934.

H. The source of the gold is gravel gold, small nuggets. (state whether ore, tailing, or placer, etc.)

I. The tons of ore or tailings, or cubic yards of gravel from which this shipment was recovered are about fifty tons.

J. The period within which the gold was taken from the mine or placer deposit is during the months of April and May, 1934.

K. The name and location of mine or placer deposit from which the gold was recovered is Lucky Gravel Claim, Cougher Canyon, Eldorado Co., Calif.

L. The date such gold was first melted into crude metallic gold suitable for refining at a gold refinery is May 15, 1934.

M. The date such gold was converted into the form in which presented is May 15, 1934.

The gold referred to herein was recovered by this depositor by mining or panning and no part thereof has been held by this depositor or to the best of my knowledge, information and belief, by any other person at any time in noncompliance with the Act of March 9, 1933, any executive order or orders of the Secretary of the Treasury issued thereunder, or in noncompliance with any regulations prescribed under such order or license issued pursuant thereto, or in noncompliance with the Gold Reserve Act of 1934, or any regulations or license issued thereunder. No part of such gold has ever entered into monetary or industrial use.

I make this affidavit for the purpose of inducing the purchase by a United States Mint or assay Office of gold described herein under and in accordance with the provisions of the Gold Reserve Act of 1934 and the regulations issued thereunder.

By BEN A. BOST

Subscribed and sworn to before me this 16th day of May 1934.

[Seal]

W. L. MOBLEY

(Officer administering oath)

My commission expires Nov. 7th, 1934.

(To be executed in duplicate). [10]

EXHIBIT "C"

22564

AFFIDAVIT ACCOMPANYING DEPOSITS
BY PERSONS WHO HAVE RECOVERED
GOLD BY MINING OR PANNING.

State of California

County of Nevada—ss.

I, Ben A. Bost (name) of Nevada City, Calif. (address) being first duly sworn on oath depose and say that I am the owner of Lucky Gravel Claim, Eldorado Co. (title of officer executing affidavit) of Ben A Bost, Nevada City, Calif. (name and address of depositor) the depositor of the gold described below; that I have personal knowledge of all the facts concerning said gold as set forth in this affidavit.

A. Name and address of depositor is Ben A. Bost, Nevada City, Calif.

B. Description of shipment of gold delivered is sponge gold bullion.

C. Net weight of this shipment in troy ounces is 124.25.

D. Assay or estimated fineness in parts per 1000 is 853.

E. Content of fine gold in troy ounces is 106.00 (estimate if necessary).

F. The U. S. Mint or Assay Office to which shipped, is San Francisco Mint.

Depositor is holder of Treasury License TGL serial No..... (Fill out the order below if payment is to be made to other than depositor.)

Superintendent, U. S. Mint, San Francisco, Calif.

Sir: Make payment for the above deposit to.....
.....whose address is.....

These instructions are irrevocable. I hereby accept Mint scales weight.
(depositor).

(Be sure to complete other side of this form.)

G. The date shipped is April 17, 1935.

H. The source of gold is Lucky Gravel Claim, gravel gold (state whether ore, tailing, placer, etc.).

I. The tons of ore tailing, or cubic yards of gravel from which this shipment was recovered are about 160 tons, some nugets.

J. The period within which the gold was taken from the mine or placer deposit is during Jan., Feb., Mar., and April, 1935.

K. The name and location of mine or placer from which the gold was recovered is Lucky Gravel Claim, Coughar Canyon, Eldorado Co., Calif.

L. The date such gold was first melted into crude metallic gold suitable for refining at a gold refinery is 193.....

M. The date such gold was converted into the form in which presented is April 16, 1935.

The gold referred to herein was recovered by this depositor by mining or panning and part thereof has been by this depositor or to the best of my knowledge, information and belief, by any person at any time in noncompliance with Act of March 9, 1933, any Executive Order or Orders of the Secretary of the Treasury issued thereunder or in non-compliance with any regulations prescribed under such order or license issued pursuant thereto, or in noncompliance with the Gold Reserve Act of 1934, or any regulations or license issued thereunder. No part of such gold has ever entered into monetary or industrial use.

I make this affidavit for the purpose of inducing the purchase by a United States Mint or Assay Office of gold described hereinunder and in accordance with the provisions of the Gold Reserve Act of 1934 and the regulations issued thereunder.

Depositor must sign here

BEN A. BOST

By.....

Subscribed and sworn to before me this 17th day of April, 1935.

W. L. MOBLEY

My Commission expires Nov. 7th, 1935.

Execute this form in duplicate. Deposits of less than 5 gross ounces need not be sworn to, but those of over 5 gross ounces must be sworn to. [11]

EXHIBIT "D"

16476

AFFIDAVIT ACCOMPANYING DEPOSITS
BY PERSONS WHO HAVE RECOVERED
GOLD BY MINING OR PANNING.

State of California,
County of Nevada—ss.

I, Ben A. Bost (name) of Nevada City, California (address) being first duly sworn on oath depose and say that I am the owner of Lucky Grand claim (title of officer executing affidavit) of Ben A. Bost, Nevada City, Calif. (name and address of depositor) the depositor of the gold described below; that I have personal knowledge of all the facts concerning said gold as set forth in this affidavit.

A. Name and address of depositor is Ben A. Bost, Nevada City, Calif.

B. Description of shipment of gold delivered is gold bullion sponge.

C. Net weight of this shipment in troy ounces is 97.00.

D. Assay or estimated fineness in parts per 1000 is 848.

E. Content of fine gold in troy ounces is 82.50 (estimate if necessary).

F. The U. S. Mint or Assay Office to which shipped, is San Francisco Mint.

Depositor is holder of Treasury License TGL serial No.

(Fill out the order below if payment is to be made to other than depositor).

Superintendent, U. S. Mint, San Francisco, Calif.

Sir: Make payment for the above deposit to whose address is

These instructions are irrevocable. I hereby accept Mint scales weight. (depositor).

(Be Sure to Complete Other Side of This Form)

G. The date shipped is Jan. 19, 1935.

H. The source of gold is gravel, some nuggets. (state whether ore, tailing, placer, etc.)

I. The tons of ore tailing, or cubic yards of gravel from which this shipment was recovered are about three hundred tons.

J. The period within which the gold was taken from the mine or placer deposit is during Sept., Oct., Nov. & Dec., 1934.

K. The name and location of mine or placer from which the gold was recovered is Lucky Gravel claim, Coughar Canyon, Eldorado Co., California.

L. The date such gold was first melted into crude metallic gold suitable for refining at a gold refinery is, 193.....

M. The date such gold was converted into the form in which presented is Jan. 18, 1935.

The gold referred to herein was recovered by this depositor by mining or panning and part thereof has been by this depositor or to the best of my knowledgs, information and belief, by any person at any time in noncompliance with Act of March 9, 1933, any Executive Order or Orders of the Secretary of the Treasury issued thereunder or in noncompliance with any regulations prescribed under such order or license issued pursuant thereto, or in noncompliance with the Gold Reserve Act of 1934, or any regulations or license issued thereunder. No part of such gold has ever entered into monetary or industrial use.

I make this affidavit for the purpose of inducing the purchase by a United States Mint or Assay Office of gold described hereinunder and in accordance with the provisions of the Gold Reserve Act of 1934 and the regulations issued thereunder.

Depositor Must Sign Here.

BEN A. BOST

By

Subscribed and sworn to before me this 19 day of Jan., 1935.

My Commission expires Nov. 7th, 1935.

WALTER L. MOBLEY

Execute this form in duplicate. Deposits of less than 5 gross ounces need not be sworn to, but those of over 5 gross ounces must be sworn to. [12]

EXHIBIT "E"

2917 Duplicate

Form TG-19, Treasury Department, Office of the
Secretary

AFFIDAVIT ACCOMPANYING DEPOSITS
BY PERSONS WHO HAVE RECOVERED
GOLD BY MINING OR PANNING.

State of California,
County of Eldorado—ss.

I, Ben A. Bost (Name) of Nevada City, Calif. (address) being first duly sworn on oath depose and say that I am the owner of Lucky Gravel Claim (Title of officer executing affidavit) of Coughar Canyon, Eldorado Co., Calif. (Name and address of depositor) the depositor of the gold described below; that I have personal knowledge of all the facts concerning said gold as set forth in this affidavit.

A. Name and address of depositor is Ben A. Bost, Nevada City, California.

B. Description of shipment of gold delivered is Sponge Gold Bullion, some nuggets.

C. Net weight of this shipment in troy ounces is 120.50 oz.

D. Assay or estimated fineness in parts per 1000 is 856.

E. Content of fine gold in troy ounces is 103.20 (Estimate if necessary).

F. The U. S. Mint or Assay office to which shipped, is San Francisco Mint.

Depositor is holder of Treasury License TGL, serial No.

(Fill out the order below if payment is to be made to other than depositor)

Superintendent, U. S. Mint, San Francisco, Calif.

Sir: Make payment for the above deposit to whose address is

Those instructions are irrevocable. I hereby accept Mint scales weight.

.....
(Depositor)

(Be Sure to Complete Other Side of This Form)

G. The date shipped is July 26, 1934.

H. The source of the gold is Gravel (State whether ore, tailing, placer, etc.)

I. The tons of ore or tailings, or cubic yards of gravel from which this shipment was recovered are about 100 Cubic Yards.

J. The period within which the gold was taken from the mine or placer deposit is during months of June and July, 1934.

K. The name and location of mine or placer deposit from which the gold was recovered is Lucky Gravel Claim, Eldorado Co., Calif.

L. The date such gold was first melted into crude metallic gold suitable for refining at a gold refinery is, 193.....

M. The date such gold was converted into the form in which presented is July 23, 1934.

The gold referred to herein was recovered by this depositor by mining or panning and no part thereof

has been held by this depositor or to the best of my knowledge, information and belief, by any other person at any time in noncompliance with the Act of March 9, 1933, any Executive Order or Orders of the Secretary of the Treasury issued thereunder or in noncompliance with any regulations prescribed under such order or license issued pursuant thereto, or in noncompliance with the Gold Reserve Act of 1934, or any regulations or license issued thereunder. No part of such gold has ever entered into monetary or industrial use.

I make this affidavit for the purpose of inducing the purchase by a United States Mint or Assay Office of gold described hereinunder and in accordance with the provisions of the Gold Reserve Act of 1934 and the regulations issued thereunder.

Depositor Must Sign Here.

BEN A. BOST

By

Subscribed and sworn to before me this 26 day of July, 1934.

W. L. MOBLEY

Notary Public

My Commission expires Nov. 7th, 1934.

Execute this form in duplicate. Deposits of less than 5 gross ounces need not be sworn to, but those of over 5 gross ounces must be sworn to. [13]

[Endorsed]: A true bill, Leon H. Enemark, Foreman. Presented in open court and ordered filed Mar. 30, 1937. [14]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday, the 1st day of May, in the year of our Lord one thousand nine hundred and thirty-seven.

Present: The Honorable A. F. St. Sure, District Judge.

No. 25961.

UNITED STATES OF AMERICA,

vs.

BEN A BOST.

This case came on regularly this day for arraignment of defendant Ben A. Bost, who was present with Attorney, Ray Coughlan, Esq. V. C. Hammack, Assistant U. S. Attorney, was present for and on behalf of the United States. Defendant was duly arraigned, stated true name to be as contained in Indictment, waived formal reading thereof, and thereupon filed a Demurrer to the Indictment and Motion for Bill of Particulars. After hearing Attorneys, ordered hearing on said Demurrer and Motion and also the matter of entry of plea be and the same are hereby continued to May 8, 1937. [15]

[Title of District Court and Cause.]

DEMURRER

Comes now the defendant, Ben A. Bost, above named, and demurs to the Indictment on file herein, and alleges as follows:

I.

The facts set forth in the First Count do not state facts sufficient to constitute an offense against the United States.

II.

That it does not appear in said Indictment, in the First Count thereof, nor can it be ascertained therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a violation of the Gold Reserve Act of 1934.

III.

That it does not appear in said First Count of the Indictment, nor can it be ascertained therefrom how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof.

IV.

That it does not appear in said Indictment, in the First Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or officer thereof, or any corporation in which the United States of America is a stock holder.

V.

That it does not appear in said Indictment, in the First Count thereof, that this defendant made or caused to be made or presented or caused to be presented any claim for payment or approval to or by any person or officer in the civil, military or naval service of the United States, or any department thereof, or any corporation in which the United [16] States of America is a stock holder.

VI.

That it does not appear in said Indictment, in the First Count thereof, that this defendant made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

Demurring to the second count of said indictment, defendant specifies as follows:

I.

The facts set forth in the Second Count do not state facts sufficient to constitute an offense against the United States.

II.

That it does not appear in said Indictment, in the Second Count thereof, nor can it be ascertained therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a violation of the Gold Reserve Act of 1934.

III.

That it does not appear in said Second Count of the Indictment, nor can it be ascertained therefrom how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof.

IV.

That it does not appear in said Indictment, in the Second Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or officer thereof, or any corporation in which the United States of America is a stock holder.

V.

That it does not appear in said Indictment, in the Second Count thereof, that this defendant made or caused to [17] be made or presented or caused to be presented any claim for payment or approval to or by any person or officer in the civil, military or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stock holder.

VI.

That it does not appear in said Indictment, in the Second Count thereof, that this defendant made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

Demurring to the Third Count of Said Indictment, Defendant Specifies as Follows:

I.

The facts set forth in the Third Count do not state facts sufficient to constitute an offense against the United States.

II.

That it does not appear in said Indictment, in the Third Count thereof, nor can it be ascertained therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a violation of the Gold Reserve Act of 1934.

III.

That it does not appear in said Third Count of the Indictment, nor can it be ascertained therefrom how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof.

IV.

That it does not appear in said Indictment, in the Third Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or Officer thereof, or any corporation in which [18] the United States of America is a stock holder.

V.

That it does not appear in said Indictment, in the Third Count thereof, that this defendant made

or caused to be made or presented or caused to be presented any claim for payment or approval to or by any person or officer in the civil, military or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stock holder.

VI.

That it does not appear in said Indictment, in the Third Count thereof, that this defendant made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

Demurring to the Fourth Count of Said Indictment, Defendant Specifies as Follows:

I.

The facts set forth in the Fourth Count do not state facts sufficient to constitute an offense against the United States.

II.

That it does not appear in said Indictment, in the Fourth Count thereof, nor can it be ascertained therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a violation of the Gold Reserve Act of 1934.

III.

That it does not appear in said Fourth Count of the Indictment, nor can it be ascertained therefrom

how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof. [19]

IV.

That it does not appear in said Indictment, in the Fourth Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or Officer thereof, or any corporation in which the United States of America is a stock holder.

V.

That it does not appear in said Indictment, in the Fourth Count thereof, that this defendant made or caused to be made or presented or caused to be presented any claim for payment or approval to or by any person or officer in the civil, military or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stock holder.

VI.

That it does not appear in said Indictment, in the Fourth Count thereof, that this defendant made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

Demurring to the Fifth Count of Said Indictment, Defendant Specifies as Follows:

I.

The facts set forth in the Fifth Count do not state facts sufficient to constitute an offense against the United States.

II.

That it does not appear in said Indictment, in the Fifth Count thereof, nor can it be ascertained therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a violation of the Gold Reserve Act of 1934. [20]

III.

That it does not appear in said Fifth Count of the Indictment, nor can it be ascertained therefrom how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof.

IV.

That it does not appear in said Indictment, in the Fifth Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or Officer thereof, or any corporation in which the United States of America is a stock holder.

V.

That it does not appear in said Indictment, in the Fifth Count thereof, that this defendant made

or caused to be made or presented or caused to be presented any claim for payment or approval to or by any person or officer in the civil, military or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stock holder.

VI.

That it does not appear in said Indictment, in the Fifth Count thereof, that this defendant made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

Wherefore, this defendant prays that said Indictment be as to him dismissed.

Dated: April 30, 1937.

RAY T. COUGHLIN

Attorney for Defendant.

[Endorsed]: Filed May 1, 1937. [21]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 18th day of May, in the year of our Lord one thousand nine hundred and thirty-seven.

Present: The Honorable A. F. St. Sure, District Judge.

[Title of Cause.]

In this case the defendant Ben A. Bost was present with Attorney, R. Coughlin, Esq. Robt. L. McWilliams, Esq., Assistant U. S. Attorney, was present for and on behalf of United States. Ordered that the Demurrer to Indictment heretofore submitted herein be and the same is hereby overruled, and that the Motion for a Bill of Particulars, likewise heretofore submitted, be and the same is hereby denied, and that exceptions be entered as to said orders.

Defendant thereupon being called to plead, entered a plea of "Not Guilty", which said plea the Court ordered entered. After hearing Attorneys, ordered trial set for June 29, 1937. [22]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 23rd day of November, in the year of our Lord one thousand nine hundred and thirty-seven.

Present: The Honorable A. F. St. Sure, District Judge.

[Title of Cause.]

This cause came on regularly this day for trial of the defendant, Ben A. Bost, who was present with his Attorneys Ray T. Coughlin, Esq., and Robert Zarick, Esq., Robert L. McWilliams, Esq., and Sydney P. Murman, Esq., Assistant United States Attorneys, were present for and on behalf of the United States.

Thereupon the following persons, viz.:

1. Arthur W. Hooper
2. Roy R. Rogers
3. Geo. de St. Germain
4. Louis H. Heard
5. Allen V. Williams
6. Clarke E. Wayland
7. Edmund H. Mott
8. Charles H. Adams
9. Matthew G. Best
10. J. Henry Rosenbaum
11. Marcus A. Grenadier
12. Walter H. Baird

twelve good and lawful jurors, were, after being duly examined under oath, accepted and sworn to try the issues [23] joined herein. Mr. McWilliams made a statement to the Court and Jury on behalf of the United States. Mr. Coughlin made a statement to the Court and Jury on behalf of the defendant. Chas. W. Gray, H. L. Hastings, Andrew J. Loftus, H. C. Sedelmeyer, Harry D. McGlashan, Walter L. Mobley, R. C. Lynn, Laurence Bones,

Clarence Collins, Elmer C. Ogle, Robert Murdock, William Campbell, Edward N. Rains, E. L. Scott, Henry Lahiff, John A. Shields, J. C. Ackley, Sartor Francis, Charles B. Rich were sworn and testified on behalf of the United States. The United States introduced in evidence and filed 5 exhibits Nos. 1, 2, 3, 4, 5.

Thereupon the Court, after admonishing the Jury, ordered that the further trial of this case be and the same is hereby continued to Wednesday, November 24, 1937, at 10 a.m. [24]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 24th day of November, in the year of our Lord one thousand nine hundred and thirty-seven.

Present: The Honorable A. F. St. Sure, District Judge.

[Title of Cause.]

The parties hereto and the Jury heretofore impaneled herein being present, the trial hereof was thereupon resumed. Charles B. Rich and H. L. Hastings were recalled and further testified on behalf of the United States. Clyde M. Larigure,

John Bonard were sworn and testified on behalf of the United States. The case was then rested on behalf of the United States.

Mr. Coughlin moved the Court to instruct the Jury to return a Verdict of Not Guilty, which motion the Court ordered denied.

A. M. Holmes, Ben A. Bost, C. W. Chapman, C. S. Arbogast, J. Zannoco were sworn and testified on behalf of defendant.

Mr. McWilliams introduced in evidence and filed U. S. [25] exhibit No. 6.

Thereupon the defendant rested.

H. L. Hastings and R. C. Lynn were recalled and testified on behalf of the United States in rebuttal; and the evidence was closed. Mr. Coughlin renewed the motion to instruct the Jury to return a Verdict of Not Guilty in favor of the defendant. Ordered that the further trial hereof be continued until Friday, November 26, 1937, at 10 o'clock a.m., and the Jury after being duly admonished by the Court, was excused until that time. [26]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 26th day of November, in the year of our Lord one thousand nine hundred and thirty-seven.

Present: The Honorable A. F. St. Sure, District Judge.

[Title of Cause.]

The defendant, the Attorneys, and the Jury heretofore impaneled herein being present as heretofore, the further trial hereof was thereupon resumed. Ordered that the motion for directed verdict of not guilty be and the same is hereby denied. After argument by the Attorneys and the instructions of the Court to the Jury, the Jury at 1:54 p.m., retired to deliberate upon their verdict. At 2:54 p.m., the Jury returned into Court and upon being asked if they had agreed upon a verdict replied in the affirmative and returned the following verdict, which was ordered recorded, viz.: "We, the Jury, find as to the defendant at the Bar, as follows: Guilty, 1st Count; Guilty, 2nd Count; Guilty, 3rd Count; Guilty, 4th Count; Guilty, 5th Count. C. H. Adams, Foreman." The Jury, upon being asked if said verdict as recorded is their verdict, each juror replied that it is. Ordered that the Jury be discharged from the further consideration hereof [27] and that the jurors are hereby excused until notified to report.

It is ordered that the defendant be remanded into the custody of Ray T. Coughlin, Esq., his Attorney, and that defendant appear on December 3, 1937, at 10 a.m., for judgment.

Further ordered that this case be and the same is hereby referred to the Probation Officer for investigation and report. [28]

[Title of District Court and Cause.]

VERDICT.

We, the Jury, find as to the defendant at the bar, as follows:

Guilty, 1st Count.

Guilty, 2nd Count.

Guilty, 3rd Count.

Guilty, 4th Count.

Guilty, 5th Count.

C. H. ADAMS

Foreman.

[Endorsed]: Filed at 2:54 P.M. Nov. 26, 1937.

[29]

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL.

Comes now the defendant, Ben A. Bost, and moves the above entitled Court for a new trial in the above entitled cause and for grounds specifies:

1. That on the trial the Judge admitted improper evidence.
2. That the verdict is contrary to the evidence.
3. That the verdict is contrary to law.
4. That the verdict should have been for the defendant.
5. That the Court erred upon the trial of said cause in deciding questions of law arising

during the course of trial, which errors were duly excepted to.

RAY T. COUGHLIN

ROBERT A. ZARICK

Attorneys for Defendant.

(Admission of Service)

[Endorsed]: Filed Nov. 30, 1937. [30]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 3rd day of December, in the year of our Lord one thousand nine hundred and thirty-seven.

Present: The Honorable A. F. St. Sure, District Judge.

[Title of Cause.]

This cause came on regularly this day for hearing of the Defendant's Motion for New Trial and for the pronouncing of judgment upon the defendant Ben A. Bost. The defendant was present in Court with his Attorney, Ray T. Coughlin, Esq. Robert B. McWilliams, Esq., Assistant United States Attorney, was present for and on behalf of the United States. After hearing Mr. Coughlin, it is ordered that the Defendant's Motion for New Trial be and

the same is hereby denied, to which order the defendant was allowed an Exception.

Upon consideration of the Report of the Probation Officer, it is ordered that the defendant's application for probation be and the same is hereby denied.

The defendant was then called for judgment, duly informed by the Court of the nature of the Indictment filed against him on the 30th day of March, 1937, charging him with a [31] violation of Title 18 U.S.C.A., Section 80; of his arraignment and plea of Not Guilty; of his trial, and the verdict of the Jury on the 26th day of November, 1937. The defendant was then asked if he had any legal cause to show why judgment should not now be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a Motion for New Trial and a Motion in Arrest of Judgment; and

Whereas the said defendant having been duly convicted in this cause, as aforesaid,

It Is Therefore Ordered and Adjudged that the said Ben A. Bost be imprisoned in a United States Penitentiary to be designated by the Attorney General of the United States for and during the term and period of Five (5) Years and pay a fine in the sum of Five Thousand and No/100 (\$5000.00) Dollars as to the First Count of the Indictment; be imprisoned for and during the term and period of Five (5) Years on the Second Count of the Indictment; be imprisoned for and during the term and

period of Five (5) Years on the Third Count of the Indictment; be imprisoned for and during the term of Five (5) Years on the Fourth Count of the Indictment; and be imprisoned for and during the term and period of Five (5) Years on the Fifth Count of the Indictment. Further ordered that in the default of the payment of said fine said defendant be further imprisoned in the United States Penitentiary until said fine be paid or until he be otherwise discharged in due course of law. Further ordered that said terms of imprisonment imposed on said defendant in this cause run concurrently.

Further Ordered that said defendant be committed, for said term of imprisonment, to the custody of the Attorney General of the United States or his authorized representative, and that the United States Marshal for this District forth- [32] with deliver said defendant to the Warden of said United States Penitentiary for and in execution of this Judgment.

Further ordered that a certified copy of this Judgment serve as the Commitment herein. [33]

In the Southern Division of the United States District Court for the Northern District of California.

No. 25961-S.

Violation: Title 18 USCA, Section 80 (False Affidavit—Gold Reserve Act).

UNITED STATES OF AMERICA

vs.

BEN A. BOST

JUDGMENT.

This cause came on regularly for trial on the 23rd day of November, 1937, Robt. L. McWilliams, Esq., Assistant United States Attorney, appearing on behalf of the United States, and the defendant being present in Court with Ray T. Coughlin, Esq., his Attorney.

Thereupon a Jury of twelve persons was duly impaneled, accepted and sworn to try the issues joined herein.

Whereupon, after hearing both oral and documentary evidence upon behalf of the respective parties, the cause was submitted to the Jury, who retired to deliberate upon their verdict, and subsequently returned into Court, and being called all answered to their names, and upon being asked if they had agreed upon a verdict, rendered the following written verdict, which was by the Court ordered recorded on the minutes of the Court and which said verdict is as follows:

“We, the Jury, find as to the defendant at the bar, as follows:

Guilty, 1st Count.

Guilty, 2nd Count.

Guilty, 3rd Count.

Guilty, 4th Count.

Guilty, 5th Count.

C. H. ADAMS,
Foreman.”

Whereas, on the 3rd day of December, 1937, the defendant and the attorneys being present in Court, the defendant was called for Judgment. The defendant was duly informed by the Court of the nature of the Indictment filed against him on the 30th day of March, 1937, charging him with a violation of Title 18 USCA, Section 80; of his arraignment and plea of Not Guilty; of his trial and the verdict of the Jury on the 26th day of November, 1937.

The defendant was then asked if he had any legal cause to show why judgment should not now be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having Denied a Motion for New Trial and a Motion in Arrest of Judgment; and

Whereas, the said defendant having been duly convicted in this Court, as aforesaid, [34]

It Is Therefore Ordered and Adjudged that the said, Ben A. Bost, be imprisoned in a United States Penitentiary to be designated by the Attorney Gen-

eral of the United States for and during the term and period of Five (5) Years and pay a fine in the sum of Five Thousand and No/100 (\$5000.00) Dollars as to the First Count of the Indictment; be imprisoned for and during the term and period of Five (5) Years on the Second Count of the Indictment; be imprisoned for and during the term and period of Five (5) Years on the Third Count of the Indictment; be imprisoned for and during the term and period of Five (5) Years on the Fourth Count of the Indictment; and be imprisoned for and during the term and period of Five (5) Years on the Fifth Count of the Indictment. Further ordered that in default of the payment of said fine said defendant be further imprisoned in the United States Penitentiary until said fine be paid or until he be otherwise discharged in due course of law. Further ordered that said terms of imprisonment imposed on said defendant in this cause run concurrently.

Further Ordered that said defendant be committed, for said term of imprisonment, to the custody of the Attorney General of the United States or his authorized representative, and that the United States Marshal for this District, forthwith deliver said defendant to the Warden of said United States Penitentiary for and in execution of this Judgment.

Further Ordered that a certified copy of this Judgment serve as the Commitment herein.

Dated: San Francisco, California. December 3,
1937.

A. F. ST. SURE

United States District Judge.

Examined by:

R. McW.

Assistant United States Attorney.

Judgment filed and entered this 3rd day of De-
cember, 1937.

WALTER B. MALING

Clerk,

By C. W. CALBREATH

Deputy Clerk.

Entered in Vol. 30 Judg. and Decrees at Page
455-456. [35]

No. 25961-S.

UNITED STATES OF AMERICA

vs.

BEN A. BOST.

Specific Violations.—Violation of 18 U.S.C.A.
Sec. 80 (False Affidavit Gold Reserve Act).

First Count of the Indictment—Said defendant
requested the Mint of the United States located at
San Francisco, California, to purchase certain gold,
which was accompanied by an affidavit, wherein said
defendant wilfully, knowingly and unlawfully and
contrary to his oath swore to certain material mat-

ters which were not true and which he did not believe to be true when he swore to said affidavit, to-wit, that he was the owner of a mining claim that the gold was removed from said claim.

Second, Third, Fourth and Fifth Counts—Same offense described in the First Count as to various dates and amounts of gold. [36]

At a Stated Term, to-wit: The October Term A. D. 193—, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the fourteenth day of February in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding,

Honorable Francis A. Garrecht, Circuit Judge,
Honorable Clifton Mathews, Circuit Judge.

25961-S.

No. 8678.

BEN BOST,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME FOR LODGE-
MENT OF BILL OF EXCEPTIONS AND
SETTLEMENT THEREOF, AND ASSIGN-
MENT OF ERRORS.

The motion of Ben Bost, the appellant in the above entitled action, came on regularly for hearing on the 14th day of February, 1938, upon all the files, papers, proceedings and records in the above entitled action, James M. Hanley appearing as attorney for appellant, and Robert L. McWilliams, Assistant United States Attorney appearing for the appellee, and good cause appearing therefor,

It Is Ordered that the appellant be and he is hereby given an extension of time in which to lodge bill of exceptions and file his assignment of errors in the above entitled action, to and including the 21st day of February, 1938.

And It Is Further Ordered that the appellee is granted to and including the 3rd day of March, 1938, in which to file amendments to the bill of exceptions; and

It Is Further Ordered that the trial court may then settle said bill of exceptions within five days thereafter.

(Certification of Clerk, U. S. Circuit Court of Appeals).

Filed Feb. 14, 1938. [37]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS OF DEFENDANT
BEN A. BOST.

Be It Remembered: That on or about the 30th day of March, 1937, the grand jury of the United States in and for the Northern District of California, Southern Division, returned in this Court its indictment against the defendant in the above-entitled cause, charging him in five counts of violating Section 80, Title 18, U.S.C.A.; that thereafter said defendant appeared in said court and was duly arraigned.

And Be It Further Remembered: That thereafter, and on the 1st day of May, 1937, and before said defendant Ben A. Bost had pleaded to said indictment, there was filed on behalf of said defendant a demurrer to said indictment, which said demurrer was, by the Court, subsequently overruled. Said ruling was duly excepted to.

(Exception No. 1.)

And Be It Further Remembered: That thereafter, the defendant having pleaded not guilty, and the cause being at issue, the same came on for trial on Tuesday, November 23, 1937, before the Honorable A. F. St. Sure, District Judge of said Court, the United States being represented in court by Robert L. McWilliams, Esq. and Sydney P. Murman, Esq., Assistant United States Attorneys, and the defendant being personally present and [38] represented by Ray T. Coughlin, Esq., the following proceedings were had:

Mr. McWilliams made a statement to the Court and Jury on behalf of the United States, and Ray T. Coughlin made a statement to the Court and Jury on behalf of the defendant.

Thereupon the Government, through Robert L. McWilliams, Assistant United States Attorney, called

CHARLES W. GRAY,

who testified under oath as follows:

I am in the employ of the United States Mint as license clerk. I have been so employed approximately four years. My duties with respect to affidavits that may be sent to the Mint along with gold which is offered to the Mint for purchase or, the affidavit comes through the mail and is brought to me; I review it and see whether it is filled out correctly and it is then O.K.'d by me and sent to the receiving room. I have seen these five purported affidavits. Two were taken from the Mint records and were brought here by me, and the other three are initialed by me as received and sent to the receiving room at the time the deposits are accepted. The dates indicate that they were received on or about the dates they bear, and there is a red pencil mark here showing the date the deposits were received in the receiving room. These affidavits, after they arrive, are checked as to whether or not they are filled out correctly, and then taken into the receiving room and turned over to the receiving clerk. Mr. Hastings is the receiving clerk.

The next witness called for the Government was

H. L. HASTINGS,

who testified under oath as follows:

I am employed in the United States Mint. I am head of the [39] receiving room. I have been employed there about 40 years.

Q. Referring to these affidavits, do you have anything to do with either of these or similar affidavits, or with the gold that is submitted with them?

A. They have to be re-sealed with the deposits they refer to.

Q. Will you explain what you mean by saying "re-sealed"?

A. They open the packages and then note the name on the package and compare it with the name and date on the affidavit showing that the two go together. That was done in this case with these affidavits.

The next witness called for the Government was

ANDREW J. LOFTUS,

who testified under oath as follows:

I am a computer in the United States Mint. I have held that position about four or five years. A computer is one who computes all of the deposits that are made in the Mint. For example, when gold is submitted or deposited at the Mint for sale, the first thing that happens to that gold after it is turned in is it goes into the receiving room and then afterwards comes back to me to be computed.

(Testimony of Andrew J. Loftus.)

I have nothing to do with the affidavits. With reference to the gold, itself, I compute its weight and value.

The next witness called for the Government was

H. C. SEDELMAYER,

who testified under oath as follows:

I am a civil engineer. I am in the United States Forest Service. I have been connected with the United States Forest Service twenty-five years, in San Francisco. I receive from time to time maps from the Department at Washington. I have a map [40] from my own private reports in San Francisco. It is a map of the Eldorado National Park. It is an official map.

Mr. McWilliams: I desire to offer the map in evidence and ask to have it marked as Government's Exhibit.

Mr. Coughlin: Might I inquire the purpose?

Mr. McWilliams: Yes, it is for the purpose of showing that neither on this map nor any other official map is there any Cougar Canon, although there are many canons and many other places and towns and topographical points indicated on the map, but no Cougar Canon.

Mr. Coughlin: That is objected to on the ground that no proper foundation has been laid for the map.

The Court: You will have to proceed further and lay a foundation.

(Testimony of H. C. Sedelmeyer.)

Mr. McWilliams: Q. Will you state what you mean when you say that this is an official map in your department?

A. This is a map that we use for all of our demonstration work in the National Forest, and was prepared in San Francisco from U. S. Surveys, General Land Office Surveys, and our own surveys, it was compiled from all different sources into one map.

The Court: Who compiled it?

A. It was done under my supervision by one of the draftsmen.

Q. It is correct?

A. It is as far as the information we had.

Q. Where did you get your information?

A. From the United States Geological Survey, the General Land Office Survey, and our own surveys, timber surveys.

The Court: Is that all?

Mr. McWilliams: Yes.

Mr. Coughlin: May I further urge the objection that it is hearsay?

The Court: Overruled. [41]

Mr. McWilliams: May it be marked as United States Exhibit 1?

The Court: Yes.

Mr. Coughlin: We note an exception.

(Exception No. 2.)

(The map was marked "U. S. Exhibit 2.")

(Testimony of H. C. Sedelmeyer.)

Cross-Examination.

By Mr. Coughlin:

I did not draw this map, myself. I compared this map with the country surrounding Georgetown and Eldorado County. I did not go up there myself and do it. I went and checked with each ranger as to the correctness of the map, itself. I did not do it, myself. I am reasonably sure that every canon that is referred to or mentioned by the natives or miners in or around Georgetown is designated on that map, but I am not positive. The mining claims in Eldorado County do not appear on that map. We never make a practice of consulting various old miners in the vicinity of Georgetown and Eldorado County because we can't rely on that information. The area of Eldorado County is 1737 miles. I do not know how many mining claims there are recorded in Eldorado County; I have not any idea how many there were in 1931; I have not anything to do with mining claims. This map was drawn originally in 1923 or 1924 and revised to 1934-5.

The next witness for the Government was

HARRY D. McGLASHAM,

who testified under oath as follows:

Direct Examination.

By Mr McWilliams:

I am assistant engineer of the United States, geological engineer. I have been with the United

(Testimony of Harry D. McGlasham.)

States Geological Survey [42] 31 years. The Geological Survey has many different duties; the work is divided into various branches; there is the geological branch, there is the topographical branch, which makes maps. When the Geological Survey was organized the geologists found they could not go ahead without maps, so the map division was organized, and as a result they prepared a map primarily for the use of geologists, and incidentally for public use. I think that there are maps in existence prepared by our department covering Eldorado County; I think the whole county is covered. I have several maps that cover Eldorado County. I have official maps of my department covering Georgetown in Eldorado County and covering Rattlesnake Bridge. I have received those maps from our Washington office. They are official maps used in my department; I took them from my files. I had nothing to do with making them up, myself. I know they are official maps put out by the department.

Mr. McWilliams: I desire to offer these in evidence as one exhibit.

Mr. Coughlin: To which we object, if your Honor please, on the ground that the proper foundation has not been laid, that they are hearsay.

The Court: Overruled.

Mr. Coughlin: Exception.

(Exception No. 3.)

(The maps were marked "U. S. Exhibit 3.")

(Testimony of Harry D. McGlasham.)

Cross-Examination.

By Mr. Coughlin:

I did not draw these maps. They were not drawn under my supervision. [43]

Redirect Examination.

By Mr. McWilliams:

The brown lines are the contour lines which connect points of equal elevation and the black lines relate to land divisions, county lines, etc.

The next witness for the Government was

WALTER L. MOBLEY,

who under oath testified as follows:

Direct Examination.

By Mr. Murman:

I am a justice of the peace of Nevada Township, Nevada County, California. I am also a notary public for that same county. I have been a notary eight years. On Government's Exhibit 1 for identification, consisting of what purport to be five affidavits, which affidavits bear on the reverse side thereof what purports to be the signature of Walter L. Mobley, those signatures are in fact my signature. They were placed on those affidavits by me on the dates set forth therein as the dates upon which the affidavits were subscribed and sworn to before me. On each of these affidavits there appears to be the

(Testimony of Walter L. Mobley.)
signature of Ben A. Bost, and that was placed on those affidavits in my presence by Ben A. Bost. I see Ben A. Bost in the court-room. The record shows that the witness identified the defendant Bost. At the time that the defendant in this case placed his signature on those affidavits, prior to his placing his signature on those affidavits I swore him to tell the truth. I did that on each occasion, as far as I remember. I have no doubt in my mind about it because I never stated otherwise. That is my usual practice. I can state Mr. Bost placed his signature on those affidavits on the dates set forth therein as the dates on which [44] they were subscribed and sworn to by him.

Mr. Murman: If your Honor please, at this time I ask that the affidavits heretofore marked as Government's Exhibit 1 for identification be placed in evidence as Government's Exhibit 1.

The Court: Admitted.

(The five affidavits were marked "U. S. Exhibit 1.")

The next witness for the Government was
R. C. LYNN,
who testified under oath as follows:

Direct Examination.

By Mr. McWilliams:

I am a special agent, Bureau of Internal Revenue. I have been employed in that department of

(Testimony of R. C. Lynn.)

the Government three years. I know the defendant Ben A. Bost. I first met him on August 8, 1936, at his home near Nevada City, California. The occasion I had to meet him at that time and place was I had been instructed by my superior officer to make an investigation of several individuals who it was thought possibly were handling and dealing in stolen high grade gold ore, and I searched the records of the United States Mint for the names of licensed gold buyers, or former licensed gold buyers who were selling gold in Nevada County, and Mr. Bost's name was one of those that I found. I thereupon called upon him at the time and place mentioned, and had a conversation with him. The first conversation was on the morning of August 8, 1936. There was no one else present besides Mr. Bost and myself. I have a memorandum which was not prepared at that time. It correctly sets out the notes I made of the interview. They were made when I discussed the case with Mr. McWilliams. I also have the original memorandum made at [45] the time that I have used to refresh my memory.

Mr. McWilliams: I doubt the propriety of your using these under the circumstances, but will you from your recollection and from your former examination of your original notes state what occurred in the conversation that took place?

A. He said that the gold sold by him to the Mint during 1935 was produced from the Lucky Gravel mining claim, and that he owned the mineral

(Testimony of R. C. Lynn.)

rights in this claim, and that he had leased it to seven men who were actually producing the gold. I asked him where the mine was located, and he said it was approximately 40 miles north of Georgetown, and possibly in Eldorado County.

Q. What did he state, if anything, as to whether he knew these men?

Mr. Coughlin: To which we object on the ground that—

Mr. McWilliams: I will withdraw the question. Proceed with the conversation.

Mr. Coughlin: I am going to object to this line of testimony on the ground that the corpus delicti has not been proven.

The Court: Overruled.

Mr. Coughlin: May I have an exception?

The Court: Yes.

(Exception No. 4.)

That was substantially all the discussion we had on that occasion regarding the Lucky Gravel mining claim. That was substantially all the discussion we had on that day. The next conversation I had with him was on the morning of August 24, 1936 at his home. No one else was present.

Q. State the conversation that occurred on that occasion?

Mr. Coughlin: The same objection.

The Court: Overruled.

Mr. Coughlin: Note an exception.

(Exception No. 5.) [46]

(Testimony of R. C. Lynn.)

I told Mr. Bost that I had made a number of inquiries in an effort to determine where the Lucky Gravel mining claim might be located, and that I had been unsuccessful in finding the mine, and told him that I would furnish transportation if he would go with me to show me the mine. He said that he could not do that for the reason that he had never seen the mine but once, on one occasion, and that one of the men leasing it had met him with jacks below Auburn, at Rattlesnake Bridge, and they had ridden approximately 40 miles in a northeasterly direction, and as it had been five or six years before that he did not recall the route that he took, exactly, and would not be able to show me the mine.

I have been to Rattlesnake Bridge. It is on the highway below Auburn going to Placerville. It is just a little ways east of that highway and a number of miles south of Auburn. I would not be able to tell you definitely how many miles south of Auburn. Refreshing my recollection from Government's Exhibit 2, it is about 6 or 7 miles south. I know where Georgetown is. It is approximately due east of Auburn and on the map it is fourteen miles. He stated on that occasion he could not take me there as he did not know the way. I had another conversation with him at his office in Nevada City on September 18, 1936. Deputy Collector of Internal Revenue William Malloy was present. I told Mr. Bost that I had not been successful in locating the mine, or any record of it, nor had I found anyone

(Testimony of R. C. Lynn.)

who had ever heard of it besides himself, and told him that I wanted to question him further regarding it, and he said he would answer any questions I asked him, so I placed him under oath. I am authorized to do that in my capacity as a representative of the Internal Revenue Department. I placed him under oath and after warning him of his constitutional rights, that he would not be required to answer any questions which would incriminate him, I asked him questions about the circumstances under which he acquired this mine [47] and leased it. In answer to my questions he said that he had known G. A. Swissler years ago in Trinity County. He did not spell Swissler's name, but he produced a copy of a purported lease on which Swissler's name was.

Mr. Coughlin: In order that I do not interrupt may it be understood that my objection goes to this entire line of testimony?

The Court: Yes.

Mr. Coughlin: On the ground that corpus delicti has not been proven.

The Court: Yes. Of course, if it is not connected up you can move to strike it out.

Mr. McWilliams: Yes, that is stipulated to.

(Exception No. 6.)

He said that about five or six years ago, prior to that date in 1936, Mr. Swissler had come to him and told him he had located a claim which might be worth working for ore production, and Swissler said that he needed money to start working it,

(Testimony of R. C. Lynn.)

whereupon Mr. Bost furnished him several hundred dollars. Later Mr. Bost told me in that same conversation that he had probably invested as much as \$500 in the mine; that after advancing Swissler this money he next heard about the claim when one Hans Hensen—Mr. Hensen's name appears in that lease.

Mr. McWilliams: Might I interrupt you and show you what purports to be such a lease and ask you if that is the document that he gave you at that time.

A. Yes.

Mr. McWilliams: I desire to read it in evidence, if your Honor please, at this time, as well as offer it.

(The lease was marked "U. S. Exhibit 4.")

Proceeding with Mr. Bost's statement, he said that subsequent to the time he advanced that money to Swissler Mr. Hensen came to [48] him and requested that he go to see the claim; that he then met Hensen at Rattlesnake Bridge, below Auburn, and he said it was in the fall, frost was on the ground, and Hensen had some jacks with him there at the bridge, and they started after dark, in the evening, and rode at least seven hours, he said possibly longer, in a northeasterly direction, and arrived at the claim before daylight, where they met Mr. Swissler; that he stayed at the claim one day, made the return trip to Rattlesnake Bridge after dark the next evening; that he next saw Swissler and Hensen on or about January 2, 1932,

(Testimony of R. C. Lynn.)

when they came to his home in Nevada City and had with them a third individual whose name appears on the lease as Larry Larsen. He said those three men brought him retorted gold which weighed, as I recall, 41.76 ounces. I have seen retorted gold and know what it is. It is gold that is mined or panned, covered with mercury, and in a sponge, in a porous form; that is retorted gold. Mercury, so to speak, absorbs the gold. Sponge is a sort of porous type of gold. He said that when the three brought the gold to him it was the first time he knew that they had obtained any production; that he then melted the gold and examined it, himself, and the three men said they considered him the real owner of the mineral rights on the claim, and said they would like to lease it from him, and that either that first day that they came to him, or the day following, January 2, 1932, the lease was drawn, which he exhibited to me; that he thereupon sent that gold to the United States Mint, and, according to the terms of the lease—at that time the men were at the office—he advanced them 90 per cent. of what he estimated was the value of the gold, as under the terms of the agreement with them he was to retain ten per cent. of the production for himself. I did not go into the price that was used as the basis of compensation per ounce. That was the old [49] price, between \$21 and \$35. That after the time the lease was drawn he had never seen Larsen again; that he saw Swissler again on one occasion,

(Testimony of R. C. Lynn.)

which was approximately three years prior to September, 1936, when Mr. Swissler came to his home; that all of his subsequent shipments of gold to the United States Mint after that lease was drawn represented gold which Larsen had brought to him and said it was produced at the Lucky Gravel Mining Claim; that each time when Larsen would bring a lot of gold to him Bost would borrow sufficient money from some relative to advance Larsen the estimated 90 per cent. of the value. It was Larsen that brought it. I made a memorandum of the first conversation at the time, I made a memorandum of the second conversation in my diary immediately after I left his home, and made a memorandum of his answers to my question when he was under oath at the time he answered them. As I recall, that was approximately all the information that I secured from him regarding the Lucky Gravel mining claim; he reiterated his previous statement made, that he could not take me to the mine as he did not recall just exactly where it was; he said he remembered that it was north of Georgetown approximately 40 miles in a northeasterly direction from Rattlesnake Bridge. He said that Hansen had been bringing these lots of gold in to him during 1932, 1933, 1934 and 1935. He said that he had not seen Hensen since the time Hensen brought the gold to him in the fall of 1935, which was the last shipment that Bost had made to the Mint, and that he had not seen Hensen for approximately a year; that he did not know

(Testimony of R. C. Lynn.)

why they suddenly quit bringing gold to him, and that he had never questioned their honesty in bringing the gold produced to him so that he would have his 10 per cent. I asked Mr. Bost if he could tell me where I might locate them, and he said he had never written to them, nor had they ever written to him, and that he had no idea where I [50] could locate them. I do not recall that he said anything in regard to the record being kept by the parties to this lease of the amount of production and other data. He did not show me any record that I recall. I asked Mr. Bost why the mineral rights to the property had never been claimed through a recording with the County Recorder of either Eldorado or Placer County, wherever the mine was located, and he said he had no idea why no claim had ever been filed in the official records. He also said he had never discussed with any of the three men the propriety of filing, and he also said that he understood there were seven men, including the three signators, working the claim, but that he did not know the names of the other four, nor had he ever seen them. He said his total investment in the mine was probably as much as \$500. I questioned him as to any anxiety on his part of the men bringing in all the gold produced, and he said he never questioned their honesty about bringing in all the gold the mine produced. He said the last time he had seen Hensen was approximately a year prior to the date I was questioning him; he stated it as being just prior to the date he made his last

(Testimony of R. C. Lynn.)

shipment to the Mint. As I recall, he said he always paid Hensen 90 per cent. of the estimated value of the gold. I do not believe I questioned him about what Hensen did with the money. I have stated all the interviewers that I now recall. I just questioned Mr. Bost on three occasions. I subsequently during that period made an investigation to try to locate whether there was such a mine in such a canon.

Q. When and where and with whom did you make such an investigation?

A. Well, on August 18, 1936, I went to the office of Mr. DeWitt Nelson, superintendent of the Tahoe National Forest in Nevada City and searched the maps and records in his office, and questioned Mr. Nelson, and questioned certain of his rangers regarding Cougar Canon, or Lucky Gravel mining [51] claim, and found no information.

Mr. Coughlin: We object to this and ask that the answer be stricken on the ground it is hearsay.

Mr. McWilliams: I submit it is not hearsay. It is direct information to the point that there was no such place given.

The Court: Denied.

Mr. Coughlin: May I have an exception, your Honor?

(Exception No. 7.)

On August 27 I went to the office of the superintendent of the Eldorado National Forest in Placerville, California, and there questioned Acting Forest Supervisor Harris, and searched the maps and rec-

(Testimony of R. C. Lynn.)

ords in his office without obtaining any information regarding Cougar Canon or Lucky Gravel mining claim, and on that same day I went to the office of the County Assessor of Eldorado County, Mr. C. L. Scott, and he told me he had formerly been a forest ranger at the Georgetown Ranger Station, and in his work covered all of the known trails and roads in the northern part of the county, and Mr. Scott was unable to furnish me with any information about this mine. I questioned Sheriff Smith, I believe his name is, and he was also unable to furnish me with any information. I made inquiry at the post office of Coloma and Pilot Hill. They are on the highway between Placerville and Auburn; they are west and slightly south of Georgetown. I found that neither one of the three purported lessees ever received mail at that place, at least during the time of the postmaster on duty. On September 5, 1936, I searched the records of the County Recorder for Placer County, at Auburn, California, and found no record that any claim had ever been filed. On August 27, 1936, I questioned the County Surveyor of Placer County and was unable to secure any information whereby I could locate the mine. On September 11 and 12, 1936, in company with [52] Secret Service Agent Charles Rich, we made a thorough search of the territory along the middle fork of the American River north of Georgetown and east of Forest Hill and Michigan Bluff, California.

Q. Did you make inquiries during the course of that trip?

(Testimony of R. C. Lynn.)

A. Yes, we interviewed the road supervisor, McFadden, I believe his name was, at Forest Hill, who stated he was very familiar with all of that territory—

Mr. Coughlin: I submit that this is hearsay testimony and I ask that the answer be stricken out.

Mr. McWilliams: I submit it comes in under that exception which permits the result of searches to be admitted. We have authorities, if your Honor desires them.

Mr. Coughlin: He is testifying now to what someone else told him.

Mr. McWilliams: I have that in mind.

Mr. Coughlin: That is not admissible.

Mr. McWilliams: I anticipated that objection and looked up the law, and we have the authorities if necessary.

Mr. Coughlin: May I have an exception?

The Court: Yes, the objection is overruled.

(Exception No. 8.)

I questioned the Forest Ranger on duty at the Robertson Flat Ranger Station, which is a few miles north of the Middle Fork of the American River; we questioned the forest ranger at French Meadows, Mr. Olinger; also in the same vicinity where the alleged mine was said to be. I questioned a miner working a claim out at the Goggins Mine in that vicinity, walked approximately four miles down to the end of the American River Canon, and questioned three miners whom we found working

(Testimony of R. C. Lynn.)

in there on a small claim; we also searched the Duncan Canon territory on the north [53] side of the American River, and made inquiry in Michigan Bluff and Forest Hill of numerous individuals.

Q. What was the result of those inquiries?

A. The result was we found no one who knew anyone by the name of those individuals whose names appear on the purported lease. We found no one who had heard of such a mining claim. We learned that there had been a Hans Hanson located at Michigan Bluff for several years. We located this Hanson at Isleton Ferry, below Sacramento. This man Hanson said that he had hunted and trapped all through the territory north of Georgetown a good many years, that he prospected a claim—

Mr. Coughlin: I submit, respectfully, that this is hearsay.

Mr. McWilliams: Q. Did he know of any such persons?

A. He did not. That is all I recall of pertinent information at this time.

(Thereupon a recess was taken until two o'clock p.m.)

H. L. HASTINGS,

was recalled as a witness for the Government.

Direct Examination.

(By Mr. McWilliams)

Attached to the affidavits which have been offered in evidence this morning are certain Railway Express tags. These tags came off the packages that the Express Company delivered to us. They are then fastened onto the affidavits. I keep tags with the weight and description. The description is according to the name on the affidavit. I make the weight, myself on the scales of the gold. The dates impressed with a rubber stamp are the dates that we receive the deposit and weigh it.

Mr. McWilliams: I offer these documents in evidence, your Honor. [54]

The Court: Very well.

(The documents were marked "U. S. Exhibit 5.")

I have brought with me the official records of my department showing the fineness of that gold and the number of ounces in the five shipments. These entries are official entries of my department. All of those entries were made either by me or under my direction. The particular entries dealing with the five shipments that are described on the tags and the affidavits are scattered through three different books. I will give you the first one. The receipt number is 7779, which is on the top right-hand corner of the affidavit. The name of the depositor is Ben A. Bost; the description is a bar, Location Eldorado

(Testimony of H. L. Hastings.)

County, California, Deposit number A-915; the weight before melting was 102.55 ounces, weight after melting 102.51. The fineness of the gold was .848 $\frac{1}{2}$, fineness in silver .143; the pure gold content was 86.976, and the silver content was 14.71. There is a margin note here "89.15 Nevada City, Lucky Gravel Claim, Cougar Canon." The fineness is taken from the assayer's report. The weight comes from me, the name and address from the affidavit, and marginal note from the affidavit. Fineness means the percentage of purity. Turning to the item 11,630, depositor John A. Bost, Description, 1 Bar Gold, Eldorado County, California. Deposit number 13,243; Weight before melting 79.50, Weight after melting 79.43. Fineness in gold .847 $\frac{1}{2}$. Fineness in silver .144 $\frac{1}{2}$. Fine ounces in gold 67.316. Fine ounces in silver 11.47. And the same marginal note as the other one, "Lucky Gravel Claim." Address Nevada City. The next one is 2917, Depositor John A. Bost, Description: Amalgam cake. Deposit Number 3195. Weight before melting 120.45. Weight after melting 119.51. Fineness in gold .837 $\frac{1}{4}$. Fineness in silver .153 $\frac{1}{2}$. Fine ounces in gold 100.059. Fine ounces in silver, that is, pure silver, 18.34. Nevada City, Lucky Gravel Mine. [55] Amalgam cake is what miners usually call sponge; that is gold with quicksilver which is retorted to remove the quicksilver.

The next number is 16,470. Name of the Depositor Ben A. Bost. Description, Amalgam Cake. Eldorado

(Testimony of H. L. Hastings.)

County, California. Deposit No. 21,900. Weight before melting 97.12. Weight after melting 96.64. Gold fineness .870. Silver fineness .122. Gold content 84.073. Silver content 11.79. Nevada City Lucky Gravel Claim.

Next is No. 22,564. Depositor Ben A. Bost. Description Amalgam Cake, Eldorado County. Deposit No. 29,040. Weight before melting 124.25. Weight after melting 121.94. Fineness in gold .853. Fineness in silver .130. Fine gold content 104.014. Fine silver content 16.58. Nevada City, Lucky Gravel Mine.

Thereupon

R. C. LYNN

was recalled for the Government.

Direct Examination

(Resumed)

(By Mr. McWilliams)

During the noon hour I have thought over the items of the conversation I had with Mr. Bost and found that I overlooked some. On my interview with Mr. Bost on August 8, 1936, he mentioned that the purported claim was on the public domain; in answer to a question of mine he also stated that Mr. Hensen had never told him where mail would reach him. At my interview with Mr. Bost on September 18, 1936, I asked him why he claimed the gold came from a mining claim in Eldorado County if he

(Testimony of R. C. Lynn.)

was not able to fix the place of Cougar Canon, or the purported claim better than he had, and he said the Lucky Gravel Mining Company was in Eldorado County in his affidavits to the Mint, because the three lessees told him that was the county the claim was in. I asked him how [56] he arrived at the figures which he placed on the affidavits to the Mint for total yardage or tons of earth and rock removed for the production of the particular gold in a certain shipment to the Mint, covered by an affidavit, and he said he always took the figures for that as given him by Mr. Hensen at the time Hensen would bring the gold to him. He told me that prior to the time the proposed lease was drawn on January 2, 1932 he only had an oral agreement with Mr. Swissler. When the request was subsequently made for the execution of this lease by him to this group, that they considered him the owner, he did not make any explanation of that statement as to why they considered him the owner. I asked him if he knew where Hensen might be addressed, and he said he never learned any mail address. I made notes at these different meetings.

Cross Examination

(By Mr. Coughlin)

Mr. Bost discussed with me the trip to the claim that he had taken in detail on September 18, 1936. There were present Mr. Bost, myself, and Deputy Collector of Internal Revenue Mr. Malloy. At that

(Testimony of R. C. Lynn.)

time I made a pencil memorandum. As I recall, he said that Hensen had the jacks at Rattlesnake Bridge to go into the canon on. I did not ask him the number. He said it took seven hours or more, possibly longer, for him and Hensen to arrive at the claim after they got on the mules. He said he remained at the claim that succeeding day and departed at night fall the next day. He said they returned by jacks. I did not question him about the return. I do not believe he told me who came out with him. I did not have any discussion with him relative to the weather conditions except to the extent I asked him what time of the year it was, and he said it was in the fall, when there was frost on the ground. He did not state [57] what month. When he arrived upon the claim he said he had spent the day there and Hensen showed him about the ground. As I recall, he said the workings were next to a small stream in the canon from which the men procured the drinking water, and that he was in a tunnel. I believe he said the tunnel was approximately 1000 feet long. I do not believe that he mentioned whether or not there were conveyances in the form of a track or car in the tunnel. He said he saw only the men Swissler and Hensen. I do not believe he mentioned a man by the name of Peterson. There were three besides Mr. Bost who were parties to the lease, Bost, Swissler, Hensen and Larsen. Larsen was not mentioned relative to being at the claim at the time that Mr. Bost was in there. He

(Testimony of R. C. Lynn.)

said the first time he ever saw Larsen was when the three came to his home at the time the lease was drawn. I do not believe he explained just what occurred at the mine on the day that he was there with reference to the claim, or whatever it was, with reference to any operation on that day. I do not believe there was anything said by Mr. Bost relative to him taking any specimens or pannings of gravel. I believe he told me Hensen always brought the gold in sponges or amalgam cake form, retorted. As to the manner in which he would finance the payment of Hensen for the lessees' share I asked him if Hensen would wait until the return had been received from the Mint and Bost said he would not, that Mr. Hensen would not wait, that he and Mr. Bost estimated the value of the gold and he would pay Hensen thereupon 90 per cent. of such estimated value; that if he did not have enough money on hand he would borrow sufficient funds from some of his relatives and then reimburse the relatives when he received his returns from the Mint. I had a discussion with him as to the last time that he saw Mr. Swissler. I do not recall definitely whether that was on August [58] 24 or September 18. Mr. Bost said the last and only time he had seen Swissler before the lease was drawn was approximately three years prior to the date I was questioning Mr. Bost, when Swissler came to his home in Nevada City. He told me that was the last time that he saw Swissler. He told me where he first knew Swissler. He said he

(Testimony of R. C. Lynn.)

had met him in Trinity County about 1886. He said that approximately five or six years prior to 1936 Swisser came to him and said that he had located a profitable claim and needed some money to start work, and Mr. Bost said that he had advanced Mr. Swisser several hundred dollars. He did not say that he thereafter advanced some more money. When I questioned him as to the approximate amount he had advanced, the total, he fixed the figure as approximately \$500, and nothing was said whether that had all been advanced at the same time or over a period. I did not question him when he made the last advance. There was not anything said about him making an advance at the time that he went over to the claim. As to the arrangement between him and the other men, with reference to the ownership of the claim, as I recall, he only said at the time they came to him and wanted to draw a lease they said they considered him the owner. The reason for considering him the owner was not discussed. After I had talked to Mr. Bost I then proceeded to make certain investigations relative to whether or not this claim was recorded. I went to Rattlesnake Bridge. From there I went in the direction that Mr. Bost had described. The conversation with Mr. Bost on September 18 was after I had made various attempts to locate the mine. I told him at that time I could not locate it. I don't know as I told him exactly where I had gone. I told him I had made a search for it and that I could not find it. I

(Testimony of R. C. Lynn.)

told him that I had not been able to locate it; whether or not I told him who, or if I discussed it with other persons or not, I would not say for sure. I would not say I did or [59] did not. Possibly I did. I can't say what he said, because I don't recall if I told him. When I told him that I was unable to locate it I then told him that I wished to ask him further questions about it, and he said he would answer them. That is when the sworn statement was taken. In my discussion with him relative to his trip with Hensen to the claim I do not recall that he mentioned that the tunnel that was there was a tunnel that was recently constructed, or that it was an old abandoned one. I do not recall discussing whether or not the tunnel was the result of the present development.

The next witness for the Government was

LAWRENCE BONES,

who testified under oath as follows:

Direct Examination

(By Mr. Murman.)

I have been residing in Eldorado County since 1888, and reside in Georgetown and vicinity. I have mined and prospected north of Georgetown. I have never during that period of time heard of Cougar Gulch or Cougar Canon, or the Lucky Gravel claim.

Q. Did you ever hear of Hans Hensen, G. A. Swissler or Larry Larsen?

(Testimony of Lawrence Bones.)

A. No.

Mr. Coughlin: To which we object on the ground it is immaterial, irrelevant, and incompetent, and calls for the opinion of the witness, and is hearsay.

The Court: Overruled.

Mr. Coughlin: Exception.

(Exception No. 9.)

I am now residing in Georgetown and am familiar with the mining that is going on there. [60]

Cross Examination

(By Mr. Coughlin.)

There are mining claims in the vicinity of Georgetown where I prospected that have been abandoned. I could not tell you the names of all of the abandoned claims. However, there are claims in there that have been abandoned.



The next witness called for the Government was

CLARENCE COLLINS,

who testified under oath as follows:

Direct Examination

(By Mr. Murman.)

I am a garage owner and service station owner in Georgetown, Eldorado County. I am connected in an official capacity with the county as Deputy Sheriff. I have been Deputy Sheriff for about three years. I have been residing in Georgetown and doing busi-

(Testimony of Clarence Collins.)

ness there since 1922. During that period I have had occasion to go into the surrounding country. As a Deputy Sheriff and in carrying on my business I have covered the biggest part of the district, that is, the Georgetown District. I have never run across or heard of Cougar Canon, or any mining claim known as the Lucky Gravel claim. I have never heard of Hans Hensen, G. A. Swissler or Larry Larsen as miners in that district, or in any way to my recollection. I have resided in that district continuously for all the time I have told you about.

Cross Examination

(By Mr. Coughlin.)

Swissler, or Hensen or Larsen could have been there and I not know about it.

Redirect Examination

(By Mr. Murman.)

The population of Georgetown, itself, is approximately 400. [61] The population of Eldorado County is about 8000. I believe I would know all of the miners in that vicinity at the time I have referred to.

The next witness for the Government was

ELMER C. OGLE,

who testified under oath as follows:

Direct Examination

(By Mr. Murnan)

I am a miner and a mail carrier. I reside about eight miles north and east of Georgetown by trail, in the vicinity of Volcanoville, Eldorado County. I have lived in that district about twenty-nine years. During that period of time I have been occupied as a miner and part of the time as mail carrier and have traversed the surrounding country, I should say within an eight or ten-mile radius of Volcanoville. Outside of that particular area, I was never in there prospecting, but I have been over the country as a hunter. I believe that nearly every miner that comes into that country comes down to our place to inquire about the country; they generally hunt me up to get information. I never heard of Cougar Canon or the Lucky Gravel claim.

Q. Did you ever hear of Hans Hensen or G. A. Swissler, or Larry Larsen as miners in that area?

Mr. Coughlin: We will interpose the same objection as we have heretofore.

The Court: Overruled.

Mr. Coughlin: Note an exception.

(Exception No. 10.)

A. No.

I have been mining for twenty-five years, and during that period of time have mined gravel claims as

(Testimony of Elmer C. Ogle.)

well as quartz claims. [62] During that period of time, the last five or six years, I should judge, I have handled three or four thousand yards at least. A yard of gravel is about comparable to 1½ tons. In handling that quantity of gravel I have separated the gold from the gravel and have disposed of the gold. I have noticed the proportion of the quantity of gold to the cubic yard of gravel.

Q. Are you familiar also with other mining activities in the vicinity where quantities of gravel have been handled besides the quantity that you are particularly familiar with?

A. Well, during my time there has not been very much gravel mining outside of our own.

Mr. Coughlin: We ask that the answer be stricken out on the ground it is not responsive.

The Court: Denied.

Mr. Coughlin: Exception.

(Exception No. 11.)

The Court: Q. You say there has not been much gravel mining outside of our own. What do you mean?

A. I mean there has been no real mines or no real producers since I came to the country, outside of our own.

Q. The mine you own?

A. The mine we own.

Mr. Murman: Q. What do you mean by "real producers"?

(Testimony of Elmer C. Ogle.)

A. Well, something that a man can make a living out of.

Q. How much would that run per cubic yard?

A. It would run all the way from 10 cents to 50 cents a yard.

Mr. Coughlin: I am going to ask that that answer be stricken out and my objection go before the answer.

The Court: I am wondering why you want that stricken out.

Mr. Coughlin: Why question this man about this matter at all?

The Court: He is trying to qualify him as an expert on placer mines or gravel mines. [63]

Q. Have you worked in other gravel mines in that country?

A. No, not in gravel mines, I have in quartz.

Q. The only gravel mine you know about is the one you work, yourself?

A. The one I work, myself.

Mr. Murman: Q. You say that is the only gravel mine in that vicinity that you know of?

A. That is at the present time no, there is gravel mining, but that is the only mine that has been worked on a profitable basis in that vicinity since we came into the country.

The Court: Q. When was that? When did you come into the country?

A. 28 years ago.

(Testimony of Elmer C. Ogle.)

Mr. Murman: Q. Mr. Ogle, basing your answer upon your experience and knowledge of mining, will you state to the Court and Jury what the average production per cubic yard of gravel or per ton of ore is in that vicinity?

Mr. Coughlin: Just a moment, we object to that on the ground it calls for the conclusion and opinion of the witness and the proper foundation has not been laid.

The Court: Sustained. I do not think the proper foundation has been laid.

The next witness for the Government was

ROBERT MURDOCK,

who testified under oath as follows:

Direct Examination

(By Mr. Murman)

I am a lookout for the Forest Service the greater part of the year, for the United States Government. I am stationed at the present time about fourteen miles east of Georgetown by road. I have been on that station about sixteen seasons, consecutively. My station is called Lookout Station, the elevation is 4613 feet, [64] and I have a clear view of the surrounding country. Looking west when there is no fire to make a smoke screen we can see clear across the Sacramento Valley there, which I would say is about fifty miles, and looking east you can look as

(Testimony of Robert Murdock.)

far as the Sierra Nevada Range, twenty miles. That is the highest point going east from Georgetown until you get higher in the Sierra Nevada Mountains, where there are three or four other lookouts higher than that. As lookout for the United States Forest Service I am required to have a knowledge of the surrounding topography of the country. From the point I have designated as my lookout point I would say I was entirely familiar with the surrounding country in a radial area of 15 miles. Beyond that immediate vicinity that I am entirely familiar with I have a knowledge of a further district in some direction. I have never heard of Cougar Canon in that vicinity, or the Lucky Gravel claim. I see a few prospectors and miners but I do not get acquainted with a great many of them. I have never heard of or met Hans Hensen, G. A. Swissler or Larry Larsen.

Cross Examination

(By Mr. Coughlin.)

I see prospectors and miners in the vicinity about Georgetown but not from the station occasionally. I see men there whose names I do not know.

Redirect Examination

(By Mr. Murman.)

When I am not on the lookout station I live in Georgetown. I have not only been occupied with my business in that way, but I have resided there for ten years. [65]

The next witness for the Government was
WILLIAM CAMPBELL,
who testified under oath as follows:

Direct Examination

(By Mr. Murman)

I am just a laborer. I am mining a little, that is, working in a quartz mine. I have done some mining, always in Placer County. Placer County adjoins Eldorado County. I reside in Forest Hill. I have been there about ten years and have been on the Divide all my life, right close in that vicinity. I am not familiar with Eldorado County. The Divide is Forest Hill and all those little mining towns around there. I should say Forest Hill would be about somewhere around twenty miles from Georgetown. As the crow flies, it is pretty near south. During the time I have resided there in the vicinity of Georgetown I never have heard of Cougar Canon or the Lucky Gravel claim.

Q. Have you ever run across a man by the name of Hans Hensen, G. A. Swissler, or Larry Larsen, miners in that area?

A. No.

Mr. Coughlin: Just a moment. We object to that on the ground it calls for a conclusion or opinion as to whether he ever run across them. There is no foundation laid here to show that this man may have known them.

(Testimony of William Campbell.)

The Court: He has lived on the Divide all his life.
Overruled.

Mr. Coughlin: Exception.

(Exception No. 12.)

Cross Examination

(By Mr. Coughlin)

I do not know the names of all of the prospectors who prospect or mine in Eldorado County. [66]

The next witness for the Government was

EDWARD N. RAINES,

who testified under oath as follows:

Direct Examination

(By Mr. Murman)

I am on lookout at the Forest Service up there in the summer time. When not working as a lookout I reside at Forest Hill, which is about twelve miles north of Georgetown, across the American River in Placer County. My station is about fifteen miles from Bald Mountain, where Murdock was. In my business as lookout at that point I am pretty much familiar with the topography; I am familiar with it to the west quite a distance, down toward Sacramento, Roseville and Auburn, which would be about 50 miles, east about 12 to 15 miles, and south quite a distance. I have done mining up there on my own

(Testimony of Edward N. Raines.)

behalf and am familiar with some of the old mines in that area. I am not familiar with the present workings a great deal; there is not very much present working going on, only snipers; they are fellows that are working in canons and places where they might find something. Most of the mining in Placer County, the gravel mining is in the creeks. During the depression quite a lot of snipers came in; that goes back six or seven years. I do not know of any sniper operations or other operations on a claim known as the Lucky Gravel claim; I don't know where that is, I never heard of that claim at all. I never ran across any snipers or miners by the name of Hans Hensen, G. A. Swissler or Larry Larsen.

The Court: Q. Did you ever hear of Cougar Canon?

A. Yes.

Q. Where is Cougar Canon?

A. Well, now, you have got me; when I was a young man there was some hunters in there, and they had a dog that got pretty well scratched up with a California lion, and it was said that that happened in Cougar Canon. A couple of years ago they asked me where Cougar Canon was and I told them I [67] thought Cougar Canon was tributary to Long Canon, and then I asked somebody else and they seemed to think it was tributary to Duncan Canon; that was a couple of years ago, when this question was put up to me about Cougar Canon.

Q. Who put it up to you?

(Testimony of Edward N. Raines.)

A. Somebody from the Forest Service asked me over the phone.

Q. In what county?

A. In Placer County, in the Forest Hill District.

I have never seen a place called Cougar Canon. Outside of the fact that I heard of it when I was a boy and had this call over the telephone I never heard of it in late years at all. I have lived in that vicinity all of my life.

Q. Mr. Raines, in the Cougar Canon which you mentioned to the Court, have you ever heard of any mining in that canon?

A. Well, that is a question, because I don't really know where that is, whether it would be in Long Canon or Duncan Canon. I never heard anybody say they were mining in Cougar Canon. The only time as I say I ever heard about Cougar Canon was when these hunters had that dog scratched up. That was when I was probably ten years old, 48 or 50 years ago. In the intervening period of time up to the time I had a call on the telephone about it I never heard of it. They asked me where it was and I told them I thought it was tributary to Long Canon, and they seemed to think it was tributary to Duncan Canon. I would not say when I received that call over the telephone, whether it was two years ago or when. It was not this last season, it was either a year ago or possibly two years ago.

(Testimony of Edward N. Raines.)

Cross Examination

(By Mr. Coughlin.)

The time I got the call it was being talked around of where Cougar Canon was, and some other person had the idea it was [68] up by Duncan Canon. I always had the impression it was connected with Long Canon. I know where Rattlesnake Bridge is; Long Canon would possibly be 30 miles from Rattlesnake Bridge. I had the impression that Cougar Canon was over in the vicinity of Long Canon. I do not know whether there have been mining operations over in Long Canon. I did not get acquainted with any of the snipers and miners because I was up higher, and if someone did not feel sorry for me and come up to see me I would not see anybody. I know the Griffin Mine over in Long Canon; that was quite a mining operation years ago; it is pretty much deserted now.

Redirect Examination

(By Mr. Murman.)

With regard to Cougar Canon that I have referred to, I don't know how many persons told me that it was in the vicinity of Duncan Canon; no more than one or two; and I could not even remember who it was that told me it was in Duncan Canon. I do not think it was in the message that I received over the telephone that the reference was made. From where I was located in the summer months, in order to get to Long Canon or Duncan Canon you

(Testimony of Edward N. Raines.)

would have to go by automobile or horses or some way down the road. There is no road down to the canon. There are roads on the ridges that come on the high ground between the canons. There is a road that crosses at French Meadows across the Little Fork of the American River, and comes out at Georgetown. There are lots of roads between Rattlesnake Bridge and Long Canon. There are roads leading from Rattlesnake Bridge connecting with the roads on the high portions of those canons. You could go by automobile as well as by horseback or any other way. That would be in the summer months. In the winter months you would not be able to do that. If you got in the high mountains in the snow you might have to go in some other way. In [69] the summer months you could use the roads. In going from Rattlesnake Bridge up to Duncan Canon and Long Canon you would have to cross the county roads if you followed the ridges.

The next witness for the Government was

E. L. SCOTT,

who testified under oath as follows:

Direct Examination

(By Mr. Murman)

I am County Assessor of Eldorado County, and have been since January, 1923. I have resided in

(Testimony of E. L. Scott.)

Eldorado County since 1898. My residence has been continuous up to the present time, with the exception of about four months in the year 1903, I believe. During that period I have never heard of Cougar Canon or the Lucky Gravel claim. I never heard of Hans Hensen, G. A. Swissler or Larry Larsen; I don't remember those names. I am familiar with the assessment rolls of the county; they are kept under my supervision and in my custody. There has not been any tax assessment on any such claim as the Lucky Gravel claim in Eldorado County; there has not been any tax assessment against any individual by the name of Hans Hensen, G. A. Swissler or Larry Larsen or Ben A. Bost.

The next witness for the Government was

HENRY LAHIFF,

who testified under oath as follows:

Direct Examination

(By Mr. Murman)

At the present time I am County Surveyor of Eldorado County. I have resided down in Auburn, Eldorado County for about 40 years. I have been away for three or four years down in Santa [70] Cruz and over in Europe for a year and a half. The bulk of the time the last four years I have resided in Eldorado County. I have been County Surveyor

(Testimony of Henry Lahiff.)

for the last three terms, about fourteen or fifteen years. I am very well acquainted with the vicinity of the county around Georgetown. I have not been in Volcanoville for over twenty years, but I am familiar with the country up there. Basing my opinion upon my familiarity with the country, there is no canon that I know of called Cougar Canon; there may be canons called Cougar, which probably would be some local name, but in my forty years residence in Eldorado County I have never heard of Cougar Canon. I have never run across a claim known as Lucky Gravel claim. I become familiar with miners in the County during my incumbency as County Surveyor. I never heard of any miners by the name of Hans Hensen, G. A. Swissler and Larry Larsen. I never heard of a man by the name of Ben A. Bost owning a mining claim in Eldorado County.

The next witness for the Government was

JOHN A. SHIELDS,

who testified under oath as follows:

Direct Examination

(By Mr. Murman)

I am County Surveyor of Placer County, California, and have been about sixteen years. I have resided in Placer County during that time and prior to that time. Prior to being County Surveyor I followed general engineering work for many years,

(Testimony of John A. Shields.)

and also mining. As County Surveyor I am familiar generally with the topography of Placer County, and have some familiarity with the adjoining county, Eldorado, where it immediately adjoins Placer County. I would say Forest Hill in Placer County and Georgetown in Eldorado County were about equidistant from the [71] dividing line of the two counties. Those two places, as the crow flies, I would say are about twelve miles apart. I have never heard of Cougar Canon in Eldorado County or Placer County, nor of a mining claim in that area known as the Lucky Gravel claim. I have been more or less familiar with the mining activities and have met a great many miners during the time I have gained my familiarity with mining activities. I have never heard of or run across Hans Hensen, G. A. Swissler, or Larry Larsen; I never heard of Ben A. Bost, a miner, in that area.

Cross Examination

(By Mr. Coughlin.)

I don't know, as a matter of fact, whether a man by the name of Swissler ever conducted any mining operations in Eldorado County or not. He could have and I not know it.

The next witness for the Government was

J. C. ACKLEY,

who testified under oath as follows:

Direct Examination

(By Mr. Murman.)

I am in the general merchandise business in Georgetown, Eldorado County. I have been a merchant there since 1909; I have been in that section much longer than that. I have been in that section since 1895. I was in Volcanoville for a number of years; that is in the same county. I am fairly well acquainted with the surrounding country around Georgetown. I have sold merchandise to people in that area. I was fourteen years ago in Volcanoville and I had a store there, too, that is eight or nine miles north of Georgetown. I never have run across Cougar Canon in that area, never heard of it. I never have run across a mining claim or heard of a mining claim known as the Lucky Gravel claim. In [72] my general merchandise business in Georgetown I have sold supplies to various miners and have met most of them, I should say. I never did much grubstaking. I have never met Hans Hensen, G. A. Swissler or Larry Larsen, miners in that area, and I have never known of Ben A. Bost, miner in that area.

Cross Examination

(By Mr. Coughlin.)

I do not know how far Georgetown is from Rattlesnake Bridge, exactly. I would say it was

(Testimony of J. C. Ackley.)

about 12 miles. It would be farther than that by the highway. In a direct line it would be ten or twelve miles. I could not say that a man by the name of Swissler did not engage in any mining activities in Eldorado County in the last seven years. As to a man by the name of Hans Hensen engaging in such activities during that time, all I could say is I never knew anyone by that name. They could have been in there and I not know it. In fact, people come in there I do not know.

Redirect Examination

(By Mr. Murman.)

I don't think it would be very long for a person to be in the vicinity of Georgetown mining and buying supplies before I would become acquainted with him. If he was doing any extensive mining I would say I would know him, more so than if he was a prospector, you see, then, they might be there for a longer time and I know them; at least, I might see them and not know their name.

The next witness for the Government was

SARTOR J. FRANCIS,

who testified under oath as follows:

Direct Examination

(By Mr. Murman)

I am a butcher in Georgetown. I was born and raised there, [73] and have been a butcher over

(Testimony of Sartor J. Francis.)

thirty years. I had occasion as a boy, and later on, to go into the surrounding country. I am familiar with the country around Georgetown, up about fifteen miles and beyond that, I have been clean up to Lake Tahoe horseback; all over that country. I have tramped through the country. I have a place about 40 miles from Georgetown on the mountain range up there; that is northeast from Georgetown. I have never run across Cougar Canon during my tramps in that area. I never heard of Cougar Canon. I never heard of a mining claim in that area known as Lucky Gravel claim. I have met quite a few miners that worked around Georgetown; a number of them trade at my shop. That includes the years 1934 and 1935, and also earlier, going back to 1929 and '30. During that time I never heard of a miner or several miners known as Hans Hensen, G. A. Swissler and Larry Larsen. I never heard of Ben A. Bost, a miner in that area.

Cross Examination

(By Mr. Coughlin)

I might not have heard of Mr. Swissler being in there, but he could have been there without my knowing it, but he could not have stayed very long. I generally get acquainted with a lot of those fellows that come in there. It has happened that men came in to mine that I did not know.

The next witness for the Government was

CHARLES B. RICH,

who testified under oath as follows:

Direct Examination

(By Mr. McWilliams)

I am an agent of the United States Secret Service and have been connected with the United States Secret Service eleven years. The United States Secret Service protects the Mint [74] against thefts and embezzlements, violations of the regulations that pertain to the thefts of gold, embezzlements of gold, and my duties cover counterfeiting. I am the Mr. Rich who was referred to by Mr. Lynn. I accompanied Mr. Lynn on the search that he made in the vicinity of Georgetown and north of Georgetown for this alleged Cougar Canon. We started out first at Forest Hill, which is about twelve miles on the Georgetown road, that is the one that goes across the canon from Georgetown northeast, and about twenty some miles by road. We then went into Georgetown, made inquiry at the post office, and met a supervisor by the name of McFadden, and we inquired of him concerning any information he could give us of Duncan or Cougar Canon, or of the Lucky Gravel claim; we also inquired the way to Long Canon and to Duncan Canon. After receiving those instructions we proceeded to the station just under Duncan Peak; from there we went into a place known as the Big Trees, about nine miles from this ranger station. We then went down a trail at-

(Testimony of Charles B. Rich.)

tempting to get into Duncan Canon and attempted to locate a man who had a mine. We next went into the place by French Meadows, which is on the same road, about twenty miles further along. Mr. Lynn and myself came down from a place called Smith House, I believe it was, went down the American River again, trying to get into Duncan Canon, and we were unsuccessful. We made inquiries of miners, anyone whom we came across en route to this place, attempting to locate the Lucky Gravel claim, or Cougar Canon. We made inquiry concerning anyone by the name of Swissler, or Hensen, or Larsen, and asked them if they knew anything of a man by the name of Bost, who owned a claim over in that particular section. We were unable to find either the mine or the canon. I made an inspection before that with Inspector Bongard. Mr. Bongard is the high grade inspector for the State Division of [75] Mines. Mr. Bongard and I started our investigation from Placerville. Mr. Bongard was assisting the Government and the Government was assisting him; in other words, we were working in conjunction. We searched the records of the Assessor's Office, contacted the County Surveyor of Placerville in an effort to locate Cougar Canon and the Lucky Gravel claim; we searched the voters' record and the assessment record for Swissler, Hensen and Larsen, that were shown on the purported lease of Mr. Bost, also for Mr. Bost, and being unable to find any information there we proceeded to Georgetown, where we

(Testimony of Charles B. Rich.)

made inquiries of various people that have testified here; we talked with every person that we came in contact with, trying to find Cougar Canon and the Lucky Gravel claim. We then went on to Volcanoville, where we interrogated the postmaster and had all the records searched at the post office, and also inquired of Mr. Ogle and his brother if they could give us any information of Cougar Canon or the Lucky Gravel claim. We were unable to find anything. We then went on to a mine which was right at the head of Duncan Canon, I cannot recall the name of it. We then went into French Meadows and talked with Mr. Olinger, of the Forest Service, who had been in that country for seven years, attempting to get the location of Cougar Canon or the mine, and were unable to do so. We went on around Forest Hill and interrogated everyone we came in contact with, both rangers and cowboys, and everybody else, and were unable to get any information concerning Cougar Canon or the mine. When we arrived in Forest Hill we talked over the telephone to Mr. Raines. At that time I do not recall that he could give me any information about Cougar Canon. We contacted other people in the vicinity of Forest Hill, amongst them a man by the name of Bisbee, who thought he might have heard of the canon, such as Mr. Raines described, and told us that he would be able to take us into it. [76] However, he never could do so. No one in all of our travels could give us any information as to the location of the Lucky Gravel

(Testimony of Charles B. Rich.)

mine, or Cougar Canon. At that particular time we spent two days on that search. During the period from the 27th of August until the middle of November we were continually on this case and other cases of the same nature, and we made inquiry of nearly all the people we came in contact with, attempting to locate this particular canon and mine in that vicinity. We were not in that same vicinity every day. We were in Garden Valley and in through the section which lies between Georgetown and Forest Hill, and made inquiries there; we checked with officers, we checked with everyone we thought could give us any information as to Mr. Swissler, or Mr. Hensen, or Mr. Larsen, and tried to find the location of the Lucky Gravel claim and Cougar Canon, without any success whatever. I know where Mr. Bost's place of business was in Nevada City.

Q. What was the character of the establishment that was being operated by him at that time in Nevada City?

Mr. Coughlin: To which we object on the ground it is immaterial, irrelevant, and incompetent, no time, place, or anything else fixed.

The Court: Overruled.

Mr. Coughlin: Exception.

(Exception No. 13.)

Right after he was arrested on the 30th of September Mr. Bongard and myself called on him at

(Testimony of Charles B. Rich.)

Nevada City, at which time I requested him to allow me to look in his place of business. He invited us in, and personally pointed out the office and the back part of the office. The front part of the office consisted of a desk and safe, and a pair of gold scales, scales you weigh gold on; immediately in the rear of it was a small room which contained a melting furnace and grinder, an electric equipped grinder. A [77] grinder is a mill which consists of a round iron or metal sort of tube. In this is mounted a machine with little shoes on it. This is run by electricity. Ore, after it has been ground to a certain fineness, is put in that mill, the electricity is turned on and it is ground to a very fine consistency. I may be wrong in that description, but the result of that is a mixed quicksilver bath and the gold is amalgamated from the ore that is in that bath.

Q. Do you know why the grinder is used?

A. I do.

Q. Do you know—"Yes" or "No"?

A. Yes.

Q. Will you tell the jury?

A. The grinder is used to grind quartz rock.

Q. What kind of quartz rock?

A. Quartz rock which bears the gold.

Mr. Coughlin: I object to that.

The Court: Overruled.

Mr. Coughlin: Exception.

(Exception No. 14.)

(Testimony of Charles B. Rich.)

It could be used for either low-grade or high-grade. It is usually used for high grade. I am testifying from my own knowledge.

Cross Examination

(By Mr. Coughlin.)

I did not see this grinder used at any time for the purpose of grinding in Mr. Bost's place. I met Mr. Bisbee at Forest Hill. I talked with Bisbee with reference to Cougar Canon. He told me that he believed he knew where there was a canon that had been called Cougar Canon. Then I had him try to take me there and he could not find it. He said he believed he knew of the canon. He took us down below the big trees, that is, Mr. Lynn and myself, down into a canon of the American River where [78] he said he thought that a trail would take us into it. He looked for the trail. I never found the trail. I believe that was on the second trip, it was sometime about the 11th or 12th of September. That was before I talked to Mr. Bost. I did not discuss that with Mr. Bost at the time I talked to him. I did not tell him I had tried to find this canon, nor that Mr. Bongard and I had been endeavoring to locate the canon. That was in 1936, in September. We went into Long Canon. There are several mines in Long Canon. That is a long territory. We did not cover the whole length of Long Canon, only that part which was adjacent to Georgetown. I would say Long Canon is about twenty-five miles long. We

(Testimony of Charles B. Rich.)

were walking in there. I saw in Long Canon what is known as the Goggins Mine, that is the one I could not remember.

(Thereupon an adjournment was taken until Wednesday, November 24, 1938.)

CHARLES B. RICH

testified as follows:

Redirect Examination

(By Mr. McWilliams.)

Q. Mr. Rich, on your cross-examination you were asked by Mr. Coughlin whether you had certain conversation with Mr. Bost along certain lines, or whether or not you did tell him certain things, and you said no. Will you explain why those matters were not gone into?

A. Mr. Bongard and I called on Mr. Bost, as I testified, for the purpose of talking to him, and we started to ask him some questions, and he said he did not care to answer any questions, he would state it to the Court when the time came.

Recross Examination

(By Mr. Coughlin.)

Q. Mr. Rich, I believe you testified yesterday with respect [79] to what you designated as a grinder in Mr. Bost's assay office. You also saw the scales of the assayer there, too, didn't you?

(Testimony of Charles B. Rich.)

A. I saw large gold scales, a large balance they weigh the gold with.

Q. Used by assayers?

A. Well, it is used by assayers and gold buyers.

Q. You know that Mr. Bost had been engaged in the assaying business in that county, don't you?

A. Yes.

Q. And you know that he had also been engaged as a licensed gold buyer in that county, don't you, up to 1931?

A. Yes. I do not know that, I have no knowledge except from the records.

Q. But you learned that from the records?

A. Yes.

Q. You also learned that he had been engaged in the assaying business up to about 1934?

A. Yes, that is correct.

Q. You referred to the fact that some particular machine or apparatus there was connected with, that is, there was electricity referred to in connection therewith by you.

A. I believe that I testified that the mill was ordinarily run by an electrical motor.

Q. Did you examine this to see if there was any electrical connection therewith at the time you were there?

A. No, not especially.

Q. Then, as a matter of fact, you don't know whether it was connected up electrically or not?

(Testimony of Charles B. Rich.)

A. I could not say that. It could have been run by electricity, or a gasoline engine, or water power.

Q. Well, as a matter of fact, did you determine during the time when Mr. Bost was actually engaged in operating that prior to the time when he ceased his assay business that it was run by a water wheel?

A. I was informed by Mr. Bost that it was, yes. [80]

The next witness called by the Government was

CLYDE M. LAIZURE

who testified under oath as follows:

Direct Examination

(By Mr. McWilliams)

I am a mining engineer employed by the State Division of Mines. I have been connected with the State Division of Mines since 1917 as district mining engineer. I graduated from the School of Mines in Metallurgy, from the University of Missouri, in the class of 1905, and I have been in that business ever since. My duties in my present position are partly office duties and partly field duties. My field duties are connected with visiting the various counties in my district, and securing the mines and mineral resources of them. In that connection I usually visit the Recorder's Office and list all of the claims recorded there for our records. In order to

(Testimony of Clyde M. Laizure.)

keep our records as complete as possible on all of the mineral resources and mining claims in the State we usually check with the Assessors, with the County Recorder's Office, and list all of the claims that are on their tax list, assessment list, and in the Recorder's Office the location of them, and the ownership, to whom they are assessed. I have done that whenever I have been in the field. As a mining engineer the dimensions of the average mining tunnels in the State of California in the Sierra Nevada Mountains vary considerably; about 5 by 7 feet would be about the average. Assuming a tunnel in the mountain a thousand feet deep, with that average tunnel 5 by 7, an approximate estimate of the cubic yards of material taken out would be 35,000 cubic feet. After that ore is taken out from the tunnel there is ordinarily an expansion in volume; broken ore is always expanded in volume, 25 to 40 per cent., depending on the character of the material. As a result of my experience with the mining industry in this State, I should [81] say that a mining property that produces over a considerable period of time gold running .56 ounces per yard, referring to gravel mine, is highly valuable.

Cross Examination

(By Mr. Coughlin)

Eldorado County is not in my district. I have no record of how many mining claims are recorded in Eldorado County. In the State of California mining

(Testimony of Clyde M. Laizure.)

claims have been recorded ever since 1849, in the different recorders' offices, and many of them have been recorded over and over by different locators where they have been abandoned. The number must run into 75,000 or more. That is just a pure guess. I do not know how many of those are in Eldorado County, nor in Placer County. Neither county is in my district. My district is from Mendocino down to San Luis Obispo and San Joaquin County and Mariposa. I do not have anything to do with this district around Placerville and Auburn and Georgetown.

Redirect Examination

(By Mr. McWilliams)

Q. In your experience over the years, will you state how many gravel mines you have run across or become familiar with that run as high in gold as .56 ounces per cubic yard?

Mr. Coughlin: I object to that. I do not see the relevancy of it.

The Court: Overruled.

Mr. Coughlin: Exception.

A. I don't recall any.

(Exception No. 15.) [82]

The next witness called for the Government was

JOHN BONGARD,

who testified under oath as follows:

Direct Examination

(By Mr. McWilliams)

I am high grade inspector of the State Division of Mines. I have held that position for ten years. I have charge of the issuance of all of the licenses to gold buyers and the investigation of general high grade conditions. Highgrading is ore stolen from various mines. I know the defendant in this case, Mr. Bost; I first met him some eight or nine years ago in Nevada City. The first time I met him with reference to this case was after he was arrested sometime after the 1st of October, 1936, in Nevada City. Mr. Rich was with me, and we asked permission of Mr. Bost to inspect his plant on Broad street, or his office. I had had connection with the case in the way of investigation prior to that visit. In August, 1936, in company with Mr. Rich I made a trip from Placerville to Georgetown, from Georgetown to Volcanoville, down to the Goggins Mine, up to French Meadows, around to Salt Flat and back down to Forest Hill; the distance covered on that day was about 90 miles, and en route we stopped at the various little towns and made inquiries in reference to Cougar Canon, the Lucky Gravel claim, and also asked various ones if they knew a man by the name of Hans Hensen, G. A. Swissler, and Larry Larsen. We did not go beyond French Meadows;

(Testimony of John Bongard.)

there was no road in there; we were driving on that particular day; we went out to French Meadows, and from there the road goes through Salt Flat, back down to Forest Hill. We did not get 40 miles beyond Georgetown. I would say we got about 20 miles north of Georgetown. Then we stopped at the ranger station at French Meadows and made inquiry, and met a couple of cowboys along there [83] herding cattle, and made inquiries in regard to Cougar Canon, the Lucky Gravel mine, and the individuals mentioned before, but were unable to locate them. We examined the records of the County Recorder's Office and County Assessor's Office for the Lucky Gravel Mine, and also for the names of Mr. Bost, Mr. Swissler, Mr. Larsen and Mr. Hensen, both at Placerville, which is the County Seat of Eldorado County, and Auburn, the County Seat of Placer County. We found no record either of the mine or the men mentioned. We then came down to Forest Hill and we made inquiry there from the Forest Ranger, and also at Georgetown we made inquiry from the Deputy Sheriff, and from some of the old-timers around that section of the country, as to whether they knew anything of Cougar Canon, the mine, or the individuals, and we found no one in Georgetown that knew anything about the mine or the individuals, but at Forest Hill we ran across a man by the name of Bisbee, who thought he knew where Cougar Canon was located. We thought it was in the vicinity of Duncan or Long Canon. Mr.

(Testimony of John Bongard.)

Rich made an appointment with Bisbee at a later date to take him to Cougar Canon, I mean to Duncan or Long Canon, in search for this Cougar Canon, which he thought was there. I did not go with him on the trip. As time went on, we were on this investigation for six or eight months, not on this particular one, but on various investigations, and occasionally we would go back to that region on the southerly end of the county, and through there, and we made inquiry from time to time if anyone knew or heard of Cougar Canon, without any success. We were gone two days on that first trip north of Georgetown. Around the 1st of October, 1936, shortly after Mr. Bost was arrested, we met him and asked his permission to visit his office; we went into the office, and in the front part of the office there was a desk, and I believe a cot in there, a big gold scales, [84] and the back of the office was equipped with crushers and an about four-foot grinding pan and retort, and I believe a melting pot. We asked him questions and he said, "I will tell that to the Court, to the Judge."

Cross Examination

(By Mr. Coughlin)

We talked to Mr. Bost around the 1st of October, I believe, shortly after he was arrested, 1936. We met Mr. Bost coming out of the post office. We said Mr. Rich and I would like to look at his office, and he told us he had no objection. We had been up

(Testimony of John Bongard.)

there at that time and made a search for the Lucky Gravel claim. We did not discuss that with Mr. Bost. We asked him a question with regard to it, and he said, "I will tell it to the Court or the Judge," and we dropped it. We had no conversation with him save and except the conversation relative to the request to view his place. When we got there and asked the question he said he would tell it to the judge, and we dropped it. On this trip we went past the Goggins Mine. It is located on the Eldorado County side on the road going up there. I think it is in Long Canon. I think the road goes up the hill from the Goggins Mine and you have to go down to the Goggins Mine. In going to the Goggins Mine I believe we had to cross the Rubicon River. There are a number of canons that run down; that is a big country in there. I believe it was two cowboys that we met. That is all the cowboys we saw. I don't remember that we talked to any miners. We talked to quite a number of people in Forest Hill; we talked to a man named Bisbee and another man that camped around there where we stopped, and several other individuals around there. The Forest Ranger we talked to has been a witness. We did not bring Mr. Bisbee. Mr. Rich and Mr. Lynn went with Mr. Bisbee to make a search for the place that he [85] thought was Cougar Canon. Mr. Bisbee thought he knew where Cougar Canon was. Mr. Bisbee was not brought here as a witness. I knew about him but as to imparting that information to the United States

(Testimony of John Bongard.)

Attorney, Mr. Rich handled that. I did not talk to Mr. Raines. Mr. Rich talked to him over the 'phone. We brought the man where he stopped, he was one of the witnesses. I don't remember who else we talked to at Forest Hill. Mr. Rich took the names of the individuals; we were both together and interviewed them. We were investigating two days; the entire trip covered two days. We did not go back to that particular part on this particular case. We were there on other business, and if the case came up we would ask if they knew where Cougar Canon was, or ever heard of it. The persons whom we talked to who told us that they did not know of or never heard of Cougar Canon, the oldtimers, we brought them here as witnesses. We didn't bring all the persons we discussed the location of Cougar Canon or the Lucky Gravel Mine. There were a lot more that we talked to. We did not subpoena all the witnesses. Some of them that were subpoenaed could not get out, as I understand it, they were snowed in. I have no record of those who could not get out, I just heard of it. I believe Mr. McWilliams has that record. We examined the records at Placerville and Auburn. We did not ask for the number of mining claims that were recorded, we asked whether there was a claim under the name of Lucky Gravel claim, or any record in the name of Ben A. Bost. We did not look at the records, we went to the County Recorder and were right there when he looked them up, we stood right there with him when

(Testimony of John Bongard.)

he looked them up. I did not accompany the recorder when he went to look at the records or the index of the claims. We did not make any effort to determine whether or not there could have been a claim known as the Lucky [86] Gravel claim recorded under another name. It would be impossible to do that.

Redirect Examination

(By Mr. McWilliams.)

On that first trip or on our subsequent trips, over a period of a couple of months, I would say that we talked to anywhere from 30 to 40 people. No one other than Bisbee had any knowledge or information with regard to any of these names. I did not talk to Mr. Raines. I have had experience in mining. I have been with the Mining Department ten years. I have examined the five affidavits that have been offered in evidence and noticed therein the number of cubic yards from which the gold referred to therein had been taken. I made a computation from six affidavits submitted by Mr. Bost. I used the total yardage on the six affidavits and the total gold on these six affidavits ran .56 of an ounce per yard. From my knowledge of gravel mines in the state it is a valuable mining claim. I have heard of some gravel claims more valuable than that, but I have never run across them. In recent years I have not heard of many that run that high. In years gone by I read reports and heard rumors of claims that

(Testimony of A. M. Holmes.)

ran much higher than that. By "recent years" I mean the last ten or twenty years; none in the last ten years.

(Thereupon the Government rested.)

Thereupon the following took place:

Mr. Coughlin: At this time, if your Honor please, I desire to move the Court that the Court instruct the jury at this time to return a verdict of not guilty on the ground that the evidence is insufficient to sustain any verdict save and except a verdict of not guilty. [87]

The Court: Denied.

Mr. Coughlin: Exception.

(Exception No. 16.)

The first witness called for the Defense was

A. M. HOLMES,

who testified under oath as follows:

Direct Examination.

(By Mr. Coughlin)

I live half way between Nevada City and Grass Valley. I have lived in Nevada County approximately forty years. I am in the funeral business. I have known Mr. Bost for a great many years, and know other persons who know him in that community. I know his general reputation for truth and veracity in which he lives, and it is good.

(Testimony of A. M. Holmes.)

Cross-Examination.

(By Mr. McWilliams)

I have known Mr. Bost since I was a small boy, about forty years, since I have been there.

Q. Did you know that in the year 1931 he endeavored to get his gold buyer's license, required under the State law, renewed, and that as a result of the protests and the testimony that was given of irregularities in his method of conducting business that his application was denied?

Mr. Coughlin: To which we object on the ground it is not proper cross-examination, and assuming a fact not in evidence.

The Court: Overruled.

Mr. Coughlin: Exception.

(Exception No. 17.)

Mr. McWilliams: Q. Did you ever hear that?

A. No, I am not familiar with that.

I am not familiar with what are called production reports that are required to be given by the producers of natural gold [88] and turned over to the sellers. I never heard that Mr. Gus Sweeney had charged that at the request of Mr. Bost he made out production tickets in blank and that over a period of approximately a year and a half he had turned in or sold gold to Mr. Bost as being of \$350 in value and that these production tickets signed in blank by him had been filled in by Mr. Bost to show the production of gold by Bost in the amount

(Testimony of A. M. Holmes.)

of \$3600. I did not know that Mr. Gus Sweeney gave sworn testimony to the same effect. I did not know that Mr. Simpkins, of the Empire Star Mining Company filed a protest with Mr. Walter Bradley, State Mineralogist, against the issuance of a gold buyer's license to Mr. Bost as a result of the testimony given at that hearing. I never heard that Mr. Nobs, of the Empire Star Mining Company also at the same time had filed a protest against the issuance of a gold buyer's license to Mr. Bost by reason of the evidence presented during that hearing. I did not know that another protest had been made against the issuance of a buyer's license to Mr. Bost by the consulting engineer of the Empire Star Mining Company. I did not ever hear that Mr. H. N. Maxfield, of the Sixteen-to-One Mine had also filed a similar protest. I never heard that Mr. Bost had been accused of buying stolen gold from the Argonaut Mine in this State.

The next witness called for the Defense was

C. W. CHAPMAN,

who testified under oath as follows:

Direct Examination.

(By Mr. Coughlin)

I am a chemist and am engaged in the practice of that profession at this date. I have been prac-

(Testimony of C. W. Chapman.)

ting since 1888. I know Mr. Bost, the defendant here. I know other persons who [89] know him. I think I know Mr. Bost's general reputation for truth, honesty and veracity in the community in which he resides. It is good.

Cross-Examination.

(By Mr. McWilliams)

I never heard that in 1932, when he asked to have his gold buyer's license renewed that as a result of protests that were put in and sworn testimony in regard to his method of doing business that that application was denied. I know nothing of that. I never heard when he again attempted two years later to get a gold buyer's license that similar protests were put in and as a result of those protests he withdrew his application. I heard the other questions that were put to the prior witness in regard to the sworn testimony that was given by Mr. Sweeney, as to his having filled in buyer's reports, and to me all of that is strange. I never heard of it until today here. I never heard of his having been charged with having purchased stolen gold from the Argonaut Mine.

The next witness for the Defense was

C. S. ARBOGAST,

who testified under oath as follows:

Direct Examination.

(By Mr. Coughlin.)

I live in Nevada City. I have been living there since 1875. I know Mr. Bost. At the present time I am one of the supervisors of Nevada County. I also have a wood business. I have been a member of the Board of Supervisors five years in January. I know other persons who know Mr. Bost. As to the general reputation of Mr. Bost for truth, honesty and veracity in that community, I would say it was good. [90]

Cross-Examination.

(By Mr. McWilliams)

I never heard as a result of his methods employed in connection with filling in buyer's reports, production reports of gold that his application for a gold buyer's license was denied. I never heard that subsequently, when he renewed that application a couple of years later that as a result of protests that were put in he withdrew his application. I never heard that he had been charged with purchasing gold stolen from the Argonaut Mine.

Redirect Examination.

(By Mr. Coughlin)

As a matter of fact, I do not know whether he was ever charged with purchasing any gold stolen from the Argonaut Mine or any other mine. I have been there sixty-two years.

The next witness called for the Defense was

J. ZANNOCO,

who testified under oath as follows:

Direct Examination.

(By Mr. Coughlin)

I live in Nevada City. I have been living there since 1894. I am in the wood and timber business. I know Mr. Bost and know other people there that know him. I know his general reputation for truth, honesty and veracity. It is very good.

Cross-Examination.

(By Mr. McWilliams)

I heard the questions put to the other witnesses. I never heard of any of those matters that were mentioned.

Redirect Examination.

(By Mr. Coughlin)

I never heard of him being arrested until the time he was [91] arrested in this case.

The next witness called for the Defendant was

BEN A. BOST,

who testified under oath as follows:

Direct Examination.

(By Mr. Coughlin)

I live in Nevada City, California. I have lived there ever since I was born, which will be 72 years

(Testimony of Ben A. Bost.)

tomorrow. Since 1907 until March, 1934, when my health failed me, I was running a general assay office in Nevada City. My work consisted of assaying for gold, silver, lead and copper, and to make amalgamation tests of quartz to see what it would go for sump. I had a nervous breakdown in March, 1934. I have been in Nevada City all of my life except eight months in 1886, when I was in business in Trinity County, in Deadwood. I remained there about eight months. I started in the chlorination business there, and then I went out prospecting with a man named Mr. Swissler. That is the same Mr. Swissler that has been referred to during the course of this trial. I ceased the general assay business in the year 1934. The building where I conducted that business belonged to me at that time, and all of the implements and tools. I do not still own them. During the years 1935 and 1936 I could go in and about that place at any time, I had access, I had the building practically, but still I did not own it, my daughter owned it, and still owns it, the building and equipment. The equipment is still there now. At the time Mr. Rich and Mr. Bongard asked permission to go into my premises, that was after my arrest. I did not make any objection, whatever, to their doing so. As to the grinder that Mr. Rich has referred to, all assays, to make amalgamation tests, have a grinding pan; first you crush the rock in a small rock crusher, as they have in an assay office, and then [92] you put in a grinding

(Testimony of Ben A. Bost.)

pan about 40 pounds, and put in quicksilver, and that makes the amalgamation test, and when you clean that up that is how you get the value per ton for a ton of ore or a ton of quartz. Mr. Swissler came to my office there in the spring of 1928 and said he was prospecting, and that he would like me to put up \$250 to help him go ahead, that he thought he would strike pay gravel; that he was in the gravel district. I advanced him the \$250. After that he came over occasionally with small amounts of gold. With reference to the Lucky Gravel mine that Mr. Swissler discussed with me, I asked Mr. Swissler, I said, "What is the name of the mine?" And he said, "I have not got any name for it," and then I said, "We will call it the Lucky Gravel," and he said "All right." I asked him where it was located, and he said Cougar Canon, in Eldorado County. That was at the time that he first came to my office in 1928. I saw Mr. Swissler after that time on several occasions. I gave him a few dollars when he came over, until the latter part of October, 1930, Mr. Swissler came over there and wanted to get some more money, so I said, "I don't like to put any more money in unless I see the mine." "Well," he said, "I will take you over." I said, "I do not like to go there," as my wife was ill in San Francisco with a paralytic stroke and I would be liable to be called any minute. He said, "Come on, now, we will go over." That was Mr. Swissler. It was not Mr. Hensen I went over with. I had never

(Testimony of Ben A. Bost.)

seen Mr. Hensen yet at that time. So he had an old truck there, and he said he borrowed it from a friend of his at Rattlesnake Bar, below Auburn. I said, "How are you going over there?" He said, "I have a couple of gentle riding horses," or riding ponies, "and we will go over that way, and we will save time and go on a trail"; so I thought a while, and at last I said, "All right, I will go," so we got down there [93] to Rattlesnake Bridge and these gentle riding horses were burros, so I felt like backing out then, but I thought I would see it through, anyhow, so we started out there. We started from there at half past six in the evening and got to his mine at 3:30 in the morning; I remained over night and during the next day I went in the tunnel; he had some gravel there, and I prospected it and stayed there that day, and the following morning at half past five he took me up the other way to catch the road where it forked to Georgetown; he said he thought he could get a car up there, somewhere around there, and it would take me to Auburn. So, going on the road, old abandoned road, there, along came a camper who was coming down from the mountain, and he asked us where we were going, and Mr. Swissler said I wanted to go to Nevada City; he said, "I have to go through Auburn, I live in Lincoln, I will take you as far as Auburn," and I said, "All right," and so I went to Auburn and went home. That was in October, 1930. That is when I first met Mr. Hensen,

(Testimony of Ben A. Bost.)

who was at the mine when I arrived there. There was no one else there besides Mr. Hensen and Mr. Swissler and myself. I did not ever go back to the mine. The last time that Mr. Hensen was in Nevada City with the returns from the mine he said that the gravel had all been worked out, the pay gravel, and they would have to have some more money to prospect, and told him I did not feel like doing it, I would like to go over and see the mine, but I was too weak then to do it; he said, "Never mind, when I come over again if you are able I will take you over," and I have not seen him since. I have not seen him or Swissler since. That was September, 1935. That was the last time I received any gold from them. When I was getting gold the gold would be brought to me by Mr. Hensen. Mr. Swissler did not bring any gold over from the mine after this lease was made, he wasn't in the office after that. [94] I think Hensen brought gold six times. I think it was September 12 or 13 was the last time I saw him. At that time I told him I would like to see the place again. When I went out there with Swissler I went in the night time. I did not make any marks or anything so I could find my way back in. I had a guide. I am sure the claim had not been recorded, because I named the claim, himself, and he claimed he owned the ground. As it was Swissler's I did not think it was necessary to record it. I designated myself on the form that was sent to the Mint by me as the owner because I was the

(Testimony of Ben A. Bost.)

owner, I bought the claim. I bought a half interest when I advanced the \$250 in 1928, and the rest of it when I paid the other money—when I was over there investigating the claim in October, 1930. I gave him \$245 then. He asked for \$250. I did not give him \$250, because I wanted \$5 to go on; when I went I had \$250 with me.

Cross Examination

(By Mr. McWilliams)

I had known this Mr. Swissler before he showed up in October, 1930, since 1886. I had not seen him from 1886 until he showed up in 1928 the first time. When he showed up the first time he said he had a piece of mining property over there and he was prospecting it, and he needed some money, and asked me if I would advance him \$250 for a half interest in it. I was kind of easy in those days on those things, so I said, "Sure, I would." I had a whole lot more money in those days that I have got now. I have no idea what my income was during the year 1928. I don't think I ever had to make any report those days. I did not make any report in those days. My income was such as to permit me to advance Mr. Swissler the \$250 in a mine that I had never seen. My income at that time was \$8 and \$9 a day for assaying. At that time Mr. Swissler said it was an old abandoned mine and the tunnel there, was 900 feet in, that it had been worked in early [95] days, and he was going in there, and he thought

(Testimony of Ben A. Bost.)

he would be able to strike some pay gravel in there; he had gravel then. He said he owned the property. He did not say how he had acquired title to the property. I never asked the question and he never said. I did not ask him whether he had bought the property or not. I don't know whether he had been one of the original owners. He was a friend of mine in Trinity when we were boys, and I trusted him. I had known him in Trinity County eight months. He was prospecting around in Trinity County, prospecting quartz and gravel; during the intervening years he was always prospecting. That is all I knew about him. When I say he came in the spring of 1928 and I turned over the \$250 to him, it was cash. I took a receipt for it. I destroyed the receipt years ago, I guess. It naturally got destroyed some way, because I was looking for it when this case came up. Swissler came over occasionally, however, with bits of gold. He did not say whether or not anyone else was interested in the mine at the time he first showed up. He was alone. I could not say when that was he came over with those small lots of gold, it is too far back. I have been interested in quite a few mining ventures in Nevada County before. I was not interested in any mine in Placer County at all, or in Eldorado County, except the Lucky Gravel. My first interest in that was commencing in 1928. I couldn't say how much were these lots of gold that Swissler brought in after 1928. I think one time something in the neighborhood of

(Testimony of Ben A. Bost.)

40 ounces, if I am not mistaken; outside of that, the small amounts, I don't recollect anything about that at all. I consider a small amount an ounce or two. It was I who suggested the name of the mine. I asked him about the name of the mine and he said it was never named, and I called it the Lucky Gravel. It had gone in 900 feet with no name, in the early days, that is, no name that he [96] knew of. I know I gave him some money later on, but how much I cannot recall. I made this trip to the mine in the latter part of October, 1930. The reason I went over to the mine was he wanted some more money in order to send it to his sister, who was sick in Pittsburgh, Pennsylvania. I don't know his sister's name. His home at the time was over at the mine in Eldorado County. I don't know whether anybody else was working in the mine at that time besides him. I did not ask him. I did not ask him how much of a force he had in the mine at that time. I don't think at that time there was anybody but himself. He said he was working in the mine, he did not say he had anybody with him. I never asked him. When he came over in 1930 he wanted \$250. I have no recollection of how many shipments of gold had been turned in by him up to that time between 1928 and 1930. I never kept any record of those things. As to the amounts of gold sent over between 1928 and 1930, I got 10 per cent. and he kept 20 per cent. That was pursuant to a verbal arrangement. I don't know how much the

(Testimony of Ben A. Bost.)

mine produced between 1928 and 1930. I know I did not get my \$250 back in that period. I have no recollection on that, at all. I kept no record for the purpose of determining when my \$250 was repaid. I have no record at all as to whether it was half paid or what percentage was paid up to October, 1930. In regard to this additional money in 1930, I said that before I concluded to put any more money in I would like to see the mine. He said, "I will take you over." I said, "In that thing you have there?" That is, an old Ford car." He said, "I can't take you in this but I can take you to Rattlesnake there." He said, "I borrowed this from a friend of mine, there, and I have to change to riding ponies there, and I will take you over on this." I said, "On condition you get me back, because my wife is dangerously ill in San Francisco with a paralytic stroke, and I am likely to [97] be called in any minute." My wife at that time was at the home of my daughter on Lombard street in San Francisco. I have forgotten the number. The name of my daughter was Mrs. Walmsley. Her first name was Antoinette. Her husband's name is F. S. Walmsley. The trouble with the machine was it did not run very good. According to what he told me during those months the mine was in Cougar Canon, Eldorado County. He did not say where in Eldorado County. I did not ask him. I did not ask him where Cougar Canon was, and I did not know where it was. I was interested in it in a way. I believe I

(Testimony of Ben A. Bost.)

know there is a tremendous difference in the different portions of the mining counties of the State with reference to the output of gold, but I never asked him in what portion of the county it was located. I acquired my first active interest in the mine in 1928. As to evidence of ownership, I had simply a bill of sale, a receipt. I believe it must have been destroyed, I can't find it. Anyway, I bought a half interest at that time in the mine. He was to work it and I had ten per cent. I had a half interest and I was only to get 10 per cent. He was to pay the expenses incident to operation. That was understood. In making the trips from the mine down with these lots of gold he turned in I guess he came down on his burros. I don't know. I never asked him how he came down and had no idea. I started at half past six in the evening right below Rattlesnake Bridge, and went up the American River, east, I guess it is. The river is east and west. I guess we went east. We followed the American River up, the Middle Fork, to opposite Kennedy Hill. I don't know how far that was from where we started; it must have been somewhere between 30 and 40 miles. Burros don't travel very fast, probably about four miles an hour. After we got to Kennedy Hill we turned to the right and proceeded probably five or six miles, something like that. We [98] were following a trail and after turning off those four or five miles we came to the mine, in the neighborhood of four or five miles off

(Testimony of Ben A. Bost.)

the American River. I saw no road to this mine. Swissler said there was no road there. We got there at half past three in the morning, I had something to eat and went to sleep, and after I got up I went through the tunnel. It was in about close to a thousand feet. I went in to the end. I would say a thousand feet is about right. There was evidence of recent work. He had done a hundred and some odd feet of new work. At the time I came to this tunnel at that time this man Hensen was there. I had a casual conversation with him, such as "Hello." Hensen did not have any interest in the property so far as I was aware of at that time. He was employed as a day laborer. I don't know how much he was paid; that is between him and Swissler. I had nothing to do with it. I was not interested in it. I judge the size of the tunnel was something like 5 or 7 feet, the average size tunnel; it is about the average size tunnel they run on gravel properties. I got up about seven or eight o'clock in the morning, I guess, had breakfast, and examined the tunnel. It took me about two hours to examine it. I panned some of the gravel there. I tried three or four of them there and then of the whole part of the gravel, and I took one from the bottom. I don't think it was over three pans I took. To make a test of the pan, to make a good job so that you don't lose anything, it takes all of a half hour to make a test. I simply put the gravel into the pan with some water and washed out the pan until you have

(Testimony of Ben A. Bost.)

the residue of gold. It takes a half hour if you want to be careful not to lose anything. At the termination of that panning I took a rest, I was tired. I rested all that afternoon and that night until about four o'clock the next morning, and then got up and had breakfast and he took me up toward Georgetown, to [99] catch the road. I left the mine at half past five and got to Auburn at half past one. The mouth of the tunnel was timbered. The rest was going through lava. It was not necessary to timber. It goes through lava before you strike the gravel. It went about 800 feet before striking the gravel. At the time I was there there was about a hundred feet of gravel. There was a tent at the mine, and a small creek. That is what they call Cougar Canon. This was Cougar Canon the water was in, a creek—a canon or gulch, whatever you might call it, I don't know. It was about a two-inch stream. It is very valuable up in that country, but it had no name that I know of. I did not make any inquiry relative to water rights, no investigation. I knew nothing about whether those water rights were all taken up. The next time I saw Swissler was the day the lease was signed, in January, 1932, I think; something like that. Prior to the time the lease was signed, and after October, 1930, I did not see Swissler at all. Between October, 1930 and January, 1932 he actually came in with small amounts of gold. Between 1928 and 1930 he came in also. Swissler came in with them before the

(Testimony of Ben A. Bost.)

lease was signed. Between October, 1930 and January of 1932 he came in sometimes two or three months or more; it averaged probably four or five times a year. I could not say how much gold he would bring in on those trips. Although I was getting 10 per cent. I have no idea how much gold as to amount he would bring in. As I said before, one trip I think he brought in some 40 ounces odd. That is the only one that I recollect. I don't know when that was, I could not say. I think it was after I visited the mine in October, 1930; I couldn't say how long after. I did not keep any record of these transactions. I kept records of all of their assaying but I never took any record of this. I have no idea as to how much was brought in other than the 40- [100] ounce item by Swisler after October, 1930. I had to keep records of my assaying transactions because sometimes people that you are assaying for would want a duplicate copy. He brought in from 2 ounces to 40 ounces over a period of several years and I kept no record, whatever. At that time I think I shipped this gold he brought in to Selby's. I am pretty sure I did, through the Nevada County Bank. In those days they shipped for me, excepting toward the last. Then I shipped, myself. By "the last" I mean from 1932 on, I shipped, myself. I shipped, myself, too, when I had the gold buyer's license. I think that was in 1929 or 1930. When I made the trip up to the mine in October, 1930 I had an anticipation that I was

(Testimony of Ben A. Bost.)

going to invest more money in it. I had a talk with Swissler in regard to how much he wanted for the balance; he wanted \$250. He told me that before I started, in the assay office, there. I couldn't say as to the approximate amount of gold that had been produced by the mine and turned over to me between the spring of 1928 and October, 1930. I could not say as to that time. I think 1928 and 1929 I had a gold buyer's license and it was shipped in that way. I am not certain that is the year. I don't recollect how much gold Swissler had brought in or sent in during that period of over two years. It was in the hundreds. As to the lease that was signed in January, 1932, Mr. Swissler, and Mr. Hensen, and Mr. Larsen came to my place and said they wanted to take a lease on it, that they wanted to put more men to work there, and they wanted the lease so that they could give the other people a sublease. I do not recollect that there was any gold brought in with them at that time. I am not sure whether there was any brought in that time or not. If it was a large amount they brought in I would recall it, anything over 20 ounces. Gold at that time was \$20.67 an ounce, and in 1934 it went up to \$35 an ounce. When I sent gold to the Mint I was paid on those [101] rates. There was not over 20 ounces at the most, if there was that much brought in, unless that is the date the 40-odd ounces was brought in. I think the 40 odd ounces was the largest shipment I ever received. 20 or 30 ounces of gold would not

(Testimony of Ben A. Bost.)

amount to much to me. It would be \$3 or \$4; that is all I would get off the 10 per cent. The other parties had an interest in it. If any shipment was brought in at the time the lease was entered into it wasn't a shipment in excess of around 20 ounces. I wouldn't say I would remember distinctly if there were any shipments in excess of that. I have no recollection. I don't remember a shipment that realized over \$1000 at that time. There was not any conversation with regard to the terms outside of what was set forth in the lease. I was to get 10 per cent. of all gross receipts from my investment, which amounted to in the neighborhood of \$500, probably more. It was probably some more than that but that is approximately. When I went up on the visit to the mine Swissler had fixed his price at \$250, and I brought \$250 with me. I did not bring enough to pay my expenses coming back, if there were any, because he agreed to bring me back. I don't know why he did not bring me back. He started out to bring me back but only went part ways. He did not give any reason for abandoning me there on the way home. He would have seen me home if I hadn't ran across the party coming down. There was no reason to give any reason for not coming back with me. Mr. Hensen was at the mine. They had a tent over at the mine. Apart from his tent at the mine I don't know where his home was. I saw Hensen after that when he brought the shipments in. I think there were six shipments alto-

(Testimony of Ben A. Bost.)

gether. I don't recollect how many shipments Swissler brought in before or after the lease was signed. I have no recollection of whether it was a substantial amount, or not. I don't even remember that [102] January, 1932 shipment. Hensen brought in six shipments after that. The approximate size of all of the Hensen shipments was somewhere from 80 some odd to 120 something. I don't know the exact figures. The first shipment by Hensen was sometime in January, 1934. Hensen did not bring any gold in 1932. I am referring to those shipments on those affidavits. Swissler brought in the gold after the lease was signed; I don't know how many shipments. I haven't any recollection at all. I don't remember. I have no recollection as to the approximate number that he brought in; I have no approximate recollections as to the size of the shipments that he brought in. I was interested in getting my 10 per cent. I don't know what my 10 per cent. amounted to on those shipments. I made no record, no entry of any kind. He did not accompany the shipments by any statement showing the output of the mine, nothing of that kind; Hensen did not do so at any time. I never asked for anything of that kind. I haven't seen Hensen since the last shipment that he brought in. I inquired in regard to him around Nevada City if they knew a fellow coming in there named Hensen, and nobody knew him. I hadn't seen Swissler since his last shipment. I don't remember the last time I saw him. It must have

(Testimony of Ben A. Bost.)

been the date of the last shipment that he brought in. I have not seen Larsen anywhere after the lease was signed. I did not have any correspondence with any of those three men who signed the lease. I never wrote to any of them or received any letter from them. Those three were signing up for a group of seven—they were going to sublease to the other parties. I don't know who the parties to whom they were going to sub-lease were. I had no interest in the type of the sub-lessors of my property. I had a 10 per cent. interest, but I had no reason to be interested in whom they subleased to, nor whether they were capable miners or financially responsible. It was certainly of interest to me if they embezzled all of the proceeds of the mine. I took it for granted those lessors were honest men. The lessors who signed up with me were going to sublet to those others; they would be responsible for the output. I did not have anything in writing to that effect. At the time I entered into the original lease they said they were going to have more men there and they were going to pay wages or leases. They said they were going to sublet, but I knew nothing in regard to the financial standing or character or integrity of those proposed sub-lessors. As far as I know I own that mining claim still. I did not ever locate it. When I say I own it, I mean I bought it from Swissler. I paid \$500 or \$495 for it. Swissler said he owned the ground the claim was on. I never looked up the records to see whether

(Testimony of Ben A. Bost.)

he did or not. I never made any inquiry by writing to the County Recorder or the County Assessor to see whether Swissler appeared on the records as owning the property, nothing of that kind. I had not seen him since the year 1886 and then I knew him for eight months. I wrote this lease, Exhibit 4, myself. I wrote it on the typewriter. When Hansen brought in half a dozen shipments to Nevada City, and when he would bring in those shipments he would stay several days, but not over that. I did not see him during those visits of a couple of days at all, because I was sick. March 4, 1934, I think it was that I had a nervous breakdown. Hensen was bringing in the shipments in 1934 and 1935. Swissler brought them in all the time from 1928 to 1934, I think, about six years. When he came in he would go right back; he would stop sometimes in Grass Valley, in a hotel, I suppose, or a boarding house. I do not know where he stayed. I did not during the period of six years when this business associate of mine was coming in [104] every now and then ever learn where he was stopping. He stopped with some friend in Grass Valley, but I do not know who he was. I was not unable to see him in 1934 and 1935, but to get around with him. I saw him at my home. He called at my house. I did not carry on my business during 1934 and 1935 except making those shipments from the Lucky Gravel mine. I closed my assaying business in 1934, at the time of my nervous breakdown and did not resume

(Testimony of Ben A. Bost.)

it thereafter. The only business I had from 1934 was making the Lucky Gravel shipments; as to the form, some call it retort and others call it sponge. The Mint calls it amalgam kings. It was gold, it wasn't concentrates. I got no concentrates at any time. I shipped the gold that I got in that form during that period of time to the Mint. As late as February, 1936 I think I sent 181 sacks of concentrates to the American Smelting & Refining Company of San Francisco. I shipped some, but do not know how much. I had accumulated the sacks in the assaying office. If anybody wanted to work any quartz or anything I would merely give them the key. When I said I was not transacting business, myself, I mean I wasn't in the office. It was this place the concentrates were usually sent in. I would turn over the key to anybody that wanted access to my plant, letting them put shipments in there. I don't know where those shipments were coming from. I did not keep any record of it. I do not think the law required me to keep a record of the source of concentrates that were received by me at that time, because if it did I never heard of it. I was not buying the concentrates that were being brought in; those concentrates were left there for paying for the work of the office, work they were doing. They were reducing this rock in the office they had, lots of people, prospectors around. I did not keep any record of who they are. They simply asked for the key and to use the plant. I gave the

(Testimony of Ben A. Bost.)

key to anybody who came along. The concentrates [105] that were turned in were mine. I did not keep any record of where they came from, because I did not think it was necessary. To my knowledge, I did not consider that the law required you to keep such a record. I am not familiar with the mining law. My last mining license authorizing me to buy gold expired December 31, 1931. I have not had a license after that. I shipped the concentrates after they came in by freight. I handled those transactions. They went out of the plant to the Selby Plant by truck. I did not load them, myself. The ones that hauled them loaded them. I have got home a record from the Selby Company of those concentrates that were sent down. I haven't it here. I think the whole shipment was 281 sacks, if I am correct.

Q. I have a letter here which I think may refresh your recollection on that subject. In fact, two letters.

Mr. Coughlin: May I see it, Mr. McWilliams?

Mr. McWilliams: Certainly. (Handing paper to Mr. Coughlin).

Q. I will show you these two letters, dated February 7, 1936, and ask you if that refreshes your recollection as to the shipment that you have been referring to.

Mr. Coughlin: We object to this, your Honor, on the ground it is not proper cross examination. There

(Testimony of Ben A. Bost.)

was no examination whatsoever on his direct along this line, an examination relative to his concentrates.

The Court: Objection overuled.

The Witness: A. That is correct. 281 sacks shipped, two or three days——

Mr. McWilliams: (Interrupting) Q. 155 plus 145 makes 288?

A. 281, isn't it? Maybe it's 88.

Q. As I figure it, that is 300, is it not? Does that refresh your recollection? Take another look. If that was the amount.

A. I guess that is right as far as the shipment comes, but they [106] only received 281 sacks.

Q. It does now refresh your recollection?

A. They were sent out from my home.

Q. You mean your place of business?

A. Yes.

Q. And they were concentrates that had accumulated in your office, and you now recall, having refreshed your recollection, that they had accumulated over what period of time, would you say?

A. Oh, I think it was a year and a half or more.

Q. February, 1936?

A. Something like that.

Q. Back from the middle of February, 1934, is that right?

A. I guess so.

Q. And you recall now that your memory is refreshed, that had actually accumulated over that period of time?

(Testimony of Ben A. Bost.)

A. That is what I shipped—but didn't arrive; that is what accumulated.

Q. You recall that now clearly, do you?

A. Yes.

Q. Is it not a fact that in addition to this 300, that you had shipped almost twice that many?

A. When?

Q. During that period of time. Between the time of your breakdown and 1936.

A. Not that I know of.

Q. Not that you know of?

A. No.

Q. You recall it was only this 300?

A. That is all.

Q. I also show you another letter. See if that refreshes your recollection on that subject.

Mr. Coughlin: That is objected to as incompetent, irrelevant and immaterial, and as having no bearing on the issues of the case, and not proper cross examination.

The Witness: This refers to that shipment.

Mr. McWilliams: Q. It does?

A. Yes.

Q. Are you sure about that?

A. Certainly.

Mr. McWilliams: I offer the three letters in evidence, your Honor, and ask they be marked as one exhibit. [107]

Mr. Coughlin: I object as incompetent, irrelevant, and immaterial, and not tending to prove any

(Testimony of Ben A. Bost.)

of the issues in this case, and not proper cross examination.

The Court: Overruled.

(The letters were marked "U. S. Exhibit 6.")

Mr. McWilliams: I would like to read these letters into the record.

(Mr. McWilliams reads Government's Exhibit 6.)

I was visited, as I recall it, by Mr. Hensen on the 12th or 13th of September, 1935. He wanted more money to carry on. The production during the year 1934 I think was somewhere in the neighborhood of \$9000. In 1933 it was little or nothing. I do not know what it was during 1932, I can't say, I have no recollection, at all. I got 10 per cent. throughout the year 1932. I can say what I got was under \$400. I could not say what it was. It was a small amount, that is sure. I don't remember what it was in 1935, but I know it is in the neighborhood of \$9000. I haven't the least idea of the total amount of gold taken out of that gravel mine. I know that in 1935 \$9000 was taken out of the mine on the shipment to the Mint reports. I have no record, whatsoever, of it. You remember, I have been pretty sick. When Mr. Hansen came in and told me that the gravel mine had worked out the last prior shipment that I had received prior to that information from him, I don't know whether it was April, May or June. One of those months, I could not say. I don't remember the amount. It was in the neighborhood of \$3000. Mr. Hansen said, in regard to

(Testimony of Ben A. Bost.)

the mine being worked out when it showed \$3000 in September; that was the last clean-up. There wasn't any more pay gravel. As to why they wanted more money, I having given them \$9000, they claimed that the gravel was taken out above the water level and they would [108] have to run another tunnel, so I asked them to take me over there and I would look the mine over as soon as I was able, and he said he would be back again and take me over, and I have never seen him since. At the time I was over there the mine was all right. I knew the general character and type of mine inside. I had this experience with my associates running there over a period of four years, and had found them presumably competent, and trustworthy and reliable, I thought they were. When they said more money was necessary I will tell you the reason why I did not take their word for it. I was in bad health, and getting old, and I thought if they wanted any more money, I did not have the money, myself, I would have to go out amongst my friends and raise it, that I would like to see what was over there first. I have been in the mining game all of my life, and the other men were also, as far as I was aware, and they had been operating the mine, themselves, and had first-hand knowledge of the conditions. That took \$1500. They didn't know how long the tunnel would be. They thought it would have to be longer than the old tunnel, to get down lower in the gulch. They were going to build an entirely new tunnel, they were telling me. The tunnel went through lava about 800 or 900

(Testimony of Ben A. Bost.)

feet, and you drive it through lava by blasting the ground with drills and powder. They didn't drive the old tunnel. As to how long it would take a practical mining man to drive that, it depends on how many men there were in there. I could not tell how many men worked on that tunnel. There couldn't be more than three work on a shift. They could work three shifts. I didn't stop to figure how long it took to drive that tunnel, having a full crew of competent men. It would take several years, I should judge. The men could live in tents. They had a tent there. I did not see any evidence of an attempt to de- [109] velop a mine—whether sheds, or shanties, or how it was. I did not see any at all. They put new timber in the mouth of the tunnel. I do not know how far that gravel extended in the tunnel. The tunnel is supposed to run through that ridge. I don't know how deep it was, or the width. Once in a while they had to timber that part where they struck the river bed. I do not know whether they could drive the tunnel along there instead of starting a new tunnel. It would have been practical. I do not think you could drive a tunnel through 800 feet of lava rock for \$1500. They did not say whether that would be sufficient for the purpose. That is what they wanted put up. As to how that \$1500 was to be expended, they wanted me to pay them wages, part of that was for supplies and wages and tools and everything necessary to mine with. They wanted me to pay the full \$1500 and said that it would finance this additional work.

(Testimony of Ben A. Bost.)

They didn't give any reason for suggesting that I put up the full \$1500. I called their attention to the fact that during that year they had undoubtedly received 90 per cent. of over \$9000, and they said they earned it; they didn't make more than wages for seven men. I never mentioned anything with regard to the fact that in the prior year they had made almost \$9000. I knew at that time how much the prior year's profits were. That wasn't discussed at all. I called their attention to the fact that the lease was to run five years, and that it wasn't up, at that time. They said that didn't make any difference about the lease. If they had to run a new tunnel over there they wanted to be paid for it. I did not succeed in locating Swissler any place, I never knew where he was at all. I thought he was dead. I never saw Larsen before and have never seen him since. I had his signature and knew his name. I couldn't locate him any place. I never saw Hensen since. He promised to come back and take me to the mine. He said he would [110] be back soon. I told him that he did need to come back in a hurry because I did not think I would be able to get around. I don't think he is coming back now. When Swissler and Hensen came in with these lots of gold from time to time they gave me the gold and said, "This is so many ounces," and I figured it out. That is all they did. They did not give me a written statement. They told me the mine was looking good. When they made these

(Testimony of Ben A. Bost.)

periodic trips we discussed that they were working and it looks pretty good, just general statements. I did not keep any record of those statements.

Redirect Examination

(By Mr. Coughlin)

The last time Hensen was in I said I would like to go over and see that mine. At no time after that did I see Hensen, Swissler or Larsen. At the time I was receiving this gold and at the time I was shipping it to the United States Mint, I believed, as the affidavit says and sworn to, the best of my knowledge and belief, I thought it came from the Lucky Gravel mine. I remember talking to Mr. Lynn in Nevada City. The first time I talked to him was somewhere around August of last year. I had seen Hensen the last time in September the year before. After I talked to Mr. Lynn I gave him, at the time I talked to him, a description to the best of my ability as to how to get there. Mr. Lynn came back again. He told me that he or the United States Government had made an investigation and could find no such mine. I did not at any time prior to the time that I realized that Hensen and Swissler and Larsen had not returned, and prior to the time that Mr. Lynn told me that there was not such mine being operated by those people over there, suspect Larsen or Swissler or Hensen during the time Hensen was bringing the gold to me. At the present time, after Mr. Lynn gave me [111] all of that report, he had been all through that country, I had kind of an idea in my mind

(Testimony of Ben A. Bost.)

that those fellows fooled me over there, or that they took me to somebody else's mine and showed me that, or whether they actually did own that property. I surely believed at the time I received gold from them it was coming from that mine or I would not have made that affidavit to the Mint. I told Hensen in 1934 to put up a sign there "The Lucky Gravel Mine," and he promised he would. Whether he put it up or not, I do not know. I have some doubts at the present time as to whether I actually own the mine or not. I believed at the time I did.

Recross Examination

(By Mr. McWilliams)

As to when these suspicions of my business associates first engendered in my mind, after the last time Mr. Lynn was telling me that he and—I think he said Mr. Rich was with him over there, and they went all through it and could not find anything on it, maybe there is something wrong. I don't think just at the time I told him in conversation with him that his statement made me somewhat suspicious in regard to my associations. I began to think so about a week afterwards when I commenced thinking things over. I got suspicious in October, 1936. Up to that time I was not at all suspicious in regard to them or any of them. It did not make me suspicious of him when he had promised to come back and take me to the mine and never showed up, as I did not know when he was coming. He said the next time he came over. It was in September, 1935 I had this talk with Hensen that he would

(Testimony of Ben A. Bost.)

come back and take me. When a year expired and he did not show up I thought they left the country. I was not suspicious. I thought that they had merely quit over there. I did not make any investigation then to find out about these men; I did not know where to look for them. I [112] did not write to the Recorder's Office to find out whether there were any records there. I did not write to the Assessor's Office to find out what he knew about them. I went from Nevada City to Rattlesnake Bridge in an automobile. Swissler took me down. After he got there he gave the automobile to the man who owned it; his name was Horner. That was the dilapidated car I was telling you about. Coming back when we left the mine we started out with jacks or burros. I do not know how far we traveled with them. It must have been five or six miles above Georgetown. I was traveling about an hour and a half with the burros. I was not traveling on the same trail I came in. After I had covered this distance with the burros this camper came down there from up—I think he come from Josephine, or if there is a name like that—up there. I did not make any memorandum of the circumstances of this trip when they were fresh in my memory, no record at all. The amount of gold brought to me from the Lucky Gravel Mine, the amount in these Government affidavits, I think is in the neighborhood of \$18,000. There was some gold brought to me from that mine before that actually went into effect. I could not recollect the value of that. I do not

(Testimony of Ben A. Bost.)

think it was as much as \$9000. I don't know. Only Hensen and Swissler brought me the gold from the mine. When Swissler called upon me with some ounces of gold I would weigh it and figure up, figure his 90 per cent. I took the gold and weighed it and figured up what the gold was worth and what my percentage would be, and what was coming to him and paid him then and there, or next day in cash. I had part of the money in my place and the rest I borrowed from relatives of mine who lived there part of the time. I paid them in cash for the entire amount every time. In all of these transactions involving some \$18,000 I kept no record of my own, kept the Mint returns. I had those. [113]

Thereupon the Defense rested.

Thereupon the Government proceeded with its Rebuttal evidence. The first witness recalled by the Government in rebuttal was

R. C. LYNN,

who testified as follows:

Mr. Bost said he caught a ride from Nevada City to Rattlesnake Bridge with a man who was driving on to Sacramento. I do not recall that he stated his name. I believe he stated he was a traveling salesman. He said he went from there down to the mine on the jacks of Mr. Hensen.

Cross Examination

(By Mr. Coughlin)

I believe he did mention the name of the man he went with to Rattlesnake Bridge. I am testifying

(Testimony of R. C. Lynn.)

as to my recollection in that regard of a conversation that took place in September over a year ago.

Redirect Examination

(By Mr. McWilliams)

I refreshed my recollection before I went on the stand from notes that I made immediately after my conversation with Mr. Bost. Those are the same notes I turned over to counsel to examine.

Thereupon both sides rested.

Mr. Coughlin: I desire, for the purpose of the record, at this time to move the Court to instruct the jury to return a verdict of not guilty on the ground that there is no evidence—that there is not sufficient evidence—to sustain any other verdict save and except a verdict of not guilty. [114]

The Court: I will rule on Mr. Coughlin's motion Friday morning.

(An adjournment was here taken until Friday, November 26, 1937 at ten o'clock a. m. at which time the trial was resumed.)

The Court: The motion to instruct the jury to return a verdict of not guilty is denied.

Mr. Coughlin: Exception.

(Exception No. 18.)

Thereupon the cause was argued by counsel for the Government and by counsel for the defendant, at the conclusion of which the Court instructed the jury as follows:

The Court (Orally): Gentlemen of the Jury, in this case the defendant is charged in five counts for violating Section 80, 18 United States Codes Annotated. The law that he is charged with violating provides that whoever shall knowingly and wilfully falsify, or conceal, or cover up, by any trick, scheme or device, a material fact in any matter within the jurisdiction of any department or agency of the United States, shall be punished in the manner therein provided by law.

The particular matter that the defendant is charged with having concealed and covered up has to do with the alleged purchase by the defendant of certain gold, and the subsequent sale of that gold to the United States Mint at San Francisco.

Under the Gold Reserve Act of 1934, United States Mints are authorized to purchase gold recovered from natural deposits in the United States, which gold has not entered into monetary or industrial use. For the purpose of carrying this Gold Reserve Act into effect the Secretary of the Treasury is authorized to issue appropriate regulations. It is provided in the regulations so issued by the Secretary of the Treasury that in the case of persons who have purchased such gold directly from those who [115] have mined or panned it, the Mint shall not purchase such gold unless it is accompanied by a properly executed affidavit, on a certain specified form, together with a statement, also under oath, giving, among other things, the names of the persons from whom the gold so offered for sale was purchased.

It is alleged in the first count in the indictment in this case that on or about the 6th day of April, 1936, the defendant, Ben A. Bost, requested the San Francisco Mint, which was at the time an agency of the Treasury Department of the United States, to purchase certain gold which was then and there tendered by said defendant to the Mint for sale.

It is further alleged that for the purpose of inducing the Mint to purchase said gold it was accompanied by an affidavit executed by said defendant, under the terms of which defendant is charged with having wilfully, knowingly and unlawfully certified and sworn to certain material matters which were not true, and which he did not believe to be true when he swore to said affidavit, to-wit, that he was the owner of a mining claim called the Lucky Gravel claim, and that the source of said gold so tendered and deposited was Lucky Gravel claim, mostly small nuggets, and that said gold had been recovered from said claim, which claim it was stated in said affidavit was located in Cougar Canon, Eldorado County, California, whereas in truth and in fact, as said defendant then and there well knew, he was not the owner of any mining claim in said county and State known as or called the Lucky Gravel claim, and whereas, in truth and in fact, the source of said gold was not said Lucky Gravel claim, and said gold had not been recovered from said claim, which said facts said defendant is charged at all times to have well known.

In the second, third, fourth and fifth counts of the indictment [116], similar charges are made against the defendant in connection with the sale of gold to the Mint, the principal difference in the subsequent counts being that in those counts different affidavits are alleged to have been presented by the defendant to the United States Mint at San Francisco on different dates from the one mentioned in the first count.

The Gold Reserve Act of 1934 authorized the Secretary of the Treasury to issue regulations for the purpose of carrying that Act into effect. Such regulations have the force and effect of law. Mere ignorance by the defendant of such regulations does not constitute a defense on a charge of the kind involved in this action.

Since the language of the indictment includes the charge that the defendant falsified a material fact, it is not necessary for the Government to prove that it was actually deceived by the actions of the defendant. If you find beyond a reasonable doubt that the defendant did falsify a material fact in a matter within the jurisdiction of the Treasury Department of the Government, you are authorized to find him guilty.

Under the law of the State of California it is unlawful for any person to engage in the business of purchasing or receiving for sale gold nuggets, ores, or concentrates bearing gold, without first procuring a license authorizing him to carry on such business.

Moreover, under the law of the State of California it is further provided that every person carrying on such business shall keep and preserve a book in which shall be entered at the time of the delivery to him of any gold nuggets, gold-bearing ores or concentrates, certain information, including the name or location of the mine or claim from which it shall be stated that such gold had been mined or procured, and the name of the party delivering the same, with the date of delivery. [117]

I further instruct you that although a purchase or sale of property usually implies the payment of a price in money, such payment in money is not essential to a sale. A sale may be for money or its equivalent, and such equivalent may take the form of services, or the supplying of accommodations or equipment.

A material element of the crime charged in the indictment is the element of intention, the state of mind, the question whether there was a fraudulent intention in the mind of the accused. Each and all of the counts charge the making of a false oath or a fraudulent concealment. A false oath must be fraudulently made, the concealment must have been fraudulently made.

While it is sometimes said a man must be presumed to intend the natural consequence of his acts it is never presumed, nor should a jury presume, that a man had a specific criminal intent. When a criminal statute requires the presence of a specific criminal intention, such as a fraudulent intention, such specific intention must be proved, not presumed.

The burden of proving a specific intention rests upon the prosecutor, and from the beginning to the end of a trial that must be proved, like any other fact, beyond a reasonable doubt. This question of intent, however, like all other questions of fact, is solely for the jury to determine from the evidence in the case.

The indictment on file herein is, and is to be considered as a mere charge or accusation against the defendant, and is not of itself any evidence of the defendant's guilt, and no juror in this case should permit himself to be to any extent influenced against the defendant because of or on account of such indictment on file.

It is the duty of the jury to decide whether the defendant is guilty or not guilty of the offense charged, considering all of the evidence submitted to you in the case. It is not for you [118] to consider the penalty prescribed for the punishment of the offense at all. If you are aware of the penalty prescribed by law it is your duty to disregard that knowledge. In other words, your sole duty is to decide whether the defendant is guilty or not guilty of what he is charged with. The question of punishment is left solely to the court, except as the law circumscribes its power.

In civil cases, gentlemen, the affirmative of the issue must be proved, and when the evidence is contradictory the decision must be in accordance with the preponderance of the evidence; but in criminal cases guilt must be established beyond a reasonable doubt, and the burden of establishing such guilt rests upon the government.

The law does not require of the defendant that he prove himself innocent, but the law requires the government to prove the defendant guilty in the manner and form as charged in the indictment, beyond a reasonable doubt, and unless the government has done so the jury should acquit. Before a verdict of guilty can be rendered each member of the jury must be able to say in answer to his individual conscience, that he has in his mind arrived at a fixed opinion based upon the law and the evidence in the case, and nothing else, that the defendant is guilty.

You are the exclusive judges of the credibility of the witnesses whose testimony has been admitted in evidence herein, and of the effect and value of such evidence. Your power in this regard, however, is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence. It is the province of the Court, under the law, to state to you the rules of law applicable to the case, and you, in your deliberations, will be guided by those rules as stated. It is your duty to pass upon and decide all questions of fact. [119]

In arriving at a determination as to the credibility of the witnesses who have appeared before you, you will remember that every witness is presumed to speak the truth, but this presumption may be overcome or repelled by the manner in which the witness testifies. This presumption may be overcome by the appearance of the witness upon the stand, and by the character of his testimony; or if it is unreasonable or incongruous, or by the giving of false or perjured testimony by him, or by his

interest in the case, or by any bias that may have been displayed, or by any contradictory evidence.

The defendant has offered himself as a witness in the case. This is his right, and you are to weigh his testimony in accordance with the rules given you with respect to the weighing of the testimony of the other witnesses in the case, with this additional feature, which is personal to him, you are to weigh his testimony in the light of the fact that he is the defendant in the case, and in the light of his interest in the outcome of the case because of that fact.

You are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number, or against that presumption or other evidence satisfying your minds.

I further instruct you that the oral admissions of a party have to be viewed with caution. The law presumes a defendant shall be looked upon as innocent until proven guilty beyond a reasonable doubt. This presumption remains with the defendant and will avail to acquit him unless overcome by proof of his guilt beyond a reasonable doubt. If you can reconcile the evidence before you with any reasonable hypothesis consistent with the defendant's innocence you should do so, and in that case find the defendant not guilty. [120]

The Court further charges you that a reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence, and if after an impartial comparison of all the evidence there is a want of sufficient evidence on behalf of the Govern-

ment to convince you of the truth of the charge, you can candidly say that you are not satisfied of the defendant's guilt, then you have a reasonable doubt and you should acquit him; but if after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you have no reasonable doubt and you should convict him. By such reasonable doubt you are not to understand that all doubt is to be removed. It is impossible in the determination of these questions to be absolutely certain. You are required to decide the question submitted to you by the strong probabilities of the case. The probabilities might be so strong as not to exclude all doubt or possibility of error, but as to exclude reasonable doubt. As long as you have a reasonable doubt of a defendant's guilt you may not convict him.

The good character of a person accused of a crime, when proven, is itself a fact in the case. It is a circumstance tending in a greater or less degree to establish his innocence. It must be considered in connection with all the other facts and circumstances in the case and may be sufficient in itself to raise a reasonable doubt of a defendant's guilt; but if after a full consideration of all the evidence adduced the jury believes the defendant to be guilty of the crime charged they should so find, notwith-

standing proof of good reputation. A man of good reputation may still commit crimes.

When weighing all the evidence you have an abiding conviction and believe that the defendant is guilty it is your duty to convict, and no sympathy justifies you in seeking for doubt, or putting any strained or unreasonable construction or interpretation on the evidence or the facts. Your verdict must be unanimous. The Clerk has prepared merely for your convenience two forms of verdict, the first of which is, after the entitlement of court and cause: "We, the jury, find Ben A. Bost, the defendant at the bar,,," and a place for you to insert your verdict and for the foreman to sign the same; the second of which is, after the entitlement of court and cause: "We, the jury, find as to the defendant at the bar as follows on first count, on second count, on third count, on fourth count, on fifth count," and a place for the signature of your foreman. When you have agreed upon a verdict your foreman will sign the same and you will be returned into court. Should you wish to have any or all of the exhibits in the case you may make the request and they will be sent to you in the jury room.

You may state your exceptions, if any. Any exceptions, gentlemen? The jury will retire.

(The jurors thereupon retired from the courtroom to deliberate on a verdict at 1:54 p. m. At 2:54 p. m. of said day the jury returned into court and delivered their verdict as follows:)

(Title of Court and Cause.) No. 25961-S.

“We, the Jury, find as to the defendant at bar as follows: Guilty on first count, Guilty on second count, Guilty on third count, Guilty on fourth count, Guilty on fifth count.

(Signed) C. H. ADAMS,
Foreman.”

(Thereafter, and on November 30, 1937, the defendant duly moved the Court for a new trial, said motion being as follows:) [122]

(Title of Court and Cause.) No. 25961-S

“Comes now the defendant Ben A. Bost and moves the above-entitled Court for a new trial in the above-entitled cause, and for grounds specifies:

“1. That on the trial the Judge admitted improper evidence.

“2. That the verdict is contrary to the evidence.

“3. That the verdict is contrary to law.

“4. That the verdict should have been for the defendant.

“5. That the Court erred upon the trial of said cause in deciding questions of law arising during the course of the trial, which errors were duly excepted to.

RAY T. COUGHLAN,
ROBERT A. ZARICH,
Attorneys for Defendant.

“Service by copy is hereby admitted this 30th day of November, 1937,

FRANK J. HENNESSY.”

Thereafter the Court denied the said motion for new trial, to which ruling an exception was duly taken by the defendant.

(Exception No. 19.)

Thereafter, and on December 3, 1937, the Court imposed judgment and sentence upon defendant, Ben A. Bost, as follows: That defendant Ben A. Bost be imprisoned in a United States Penitentiary to be designated by the Attorney General of the United States for and during the time and period of five years and pay a fine in the sum of \$5000 as to the first count of the indictment; be imprisoned for and during the term and period of five years on the second count of the indictment; be imprisoned for and during the term and period of five years on the third count of the indictment; be imprisoned for and during the term and period of five years on the fourth count of the indictment; and be imprisoned for and during the term and period of five years [123] on the fifth count of the indictment. Further ordered that in default of the payment of said fine the said defendant be further imprisoned in the United States Penitentiary until said fine is paid or until he be otherwise discharged in due course of law. Further ordered that said terms of imprisonment imposed on said defendant in this cause run concurrently.

To the rendering of said judgment and sentence the defendant then and there, duly excepted.

(Exception No. 20.) [124]

Thereafter, and upon the 18th day of December, 1937, which is within the time provided by the rules of court, the plaintiff, and the defendant, Ben Bost, duly stipulated, by and through their respective counsel, that the time within which the bill of exceptions in said action on behalf of said defendant and appellant, Ben Bost, be settled, be extended to and including the 12th day of February, 1938, and that said defendant and appellant file his assignment of errors and proposed bill of exceptions on or before the 12th day of February, 1938, and finally, that the plaintiff and appellee file its proposed amendments, if any, to said bill of exceptions on or before the 28th day of February, 1938. Whereupon, the Honorable A. F. St. Sure, the Judge of said Court, before whom and a jury said cause was tried, did make and enter an order on said 18th day of December, 1937, wherein and whereby it was ordered that the time within which the bill of exceptions in the above entitled action on behalf of the defendant and appellant, Ben Bost, be settled, be extended to and including the 3rd day of March, 1938, and further, that said defendant and appellant file his assignment of errors and proposed bill of exceptions on or before the 12th day of February, 1938, and finally, that the appellee file his proposed amendments, if any, to said bill of exceptions on or before the 28th day of February, 1938. Said order was

based upon the stipulation last hereinabove referred to, and good cause appearing to the court.

That thereafter, upon the 10th day of February, 1938, the appellant herein, Ben Bost, filed a written motion and a petition in the United States Circuit Court of Appeals for the Ninth District, asking that his time be extended for the lodgement of his bill of exceptions and assignment of errors. That the Circuit Court of Appeals on the 14th day of February, 1938, in open court, upon the hearing of said petition and motion, made and entered its order extending the time for the lodgement of the bill of excep- [125] tions and assignment of errors on behalf of the defendant and appellant to and including the 21st day of February, 1938, and that the appellee file its amendments, if any, on or before the 3rd day of March, 1938, and it was further ordered that the trial court settle said bill of exceptions within five days thereafter, namely, the 8th day of March, 1938.

And thereafter, on the 17th day of February, 1938, an order was duly entered of record, *pusuant* to the stipulation of the parties hereto, that the original documents and exhibits offered in evidence in said cause, that are not herein re-produced, be considered incorporated and as a part of the bill of exceptions in said cause as though actually a physical part thereof, and that the same be separately certified by the clerk of this court to the United States Circuit Court of Appeals for the Ninth Circuit. Accordngly, the exhibits in evidence herein, which are not et forth in this bill of exceptions, the same being

separately certified by the clerk of this court to the United States Circuit Court of Appeals, in and for the Ninth Circuit, are hereby referred to and incorporated and included herein and made a part hereof, the same as if actually herein set out in full.

Wherefore, said defendant and appellant, Ben Bost, hereby tenders, with said original exhibits, this as his bill of exceptions, which said proposed bill of exceptions is all of the evidence received in said cause, and respectfully prays that the same may be allowed, settled and signed by the Judge of this Court, as provided by law and the rules of court, this said bill of exceptions being tendered to said court this 17th day of February, 1938, which is within the time heretofore granted by the court, and further extended by the Circuit Court of Appeals, pursuant to the rules of court and the statute appertaining thereto for the presenting, signing and filing said bill of exceptions herein.

RAY T. COUGHLAN

JAMES M. HANLEY

Attorneys for defendant
and appellant. [126]

Service and receipt of copy of the within proposed Bill of Exceptions this 17th day of February, 1938, is hereby acknowledged.

F. J. HENNESSY

United States Attorney

By ROBERT McWILLIAMS

Attorneys for Plaintiff. [127]

ORDER SETTLING AND ALLOWING
ENGROSSED BILL OF EXCEPTIONS

The foregoing Bill of Exceptions, having been duly presented by defendant Ben A. Bost within the time heretofore duly and regularly fixed and allowed by the Court, and enlarged by the Order of the Circuit Court of Appeals, made on the 14th day of February, 1938, in accordance with law, and the plaintiff and appellee having filed no amendments to said proposed Bill of Exceptions, and said proposed Bill of Exceptions is correct and may be settled, allowed and approved as the Bill of Exceptions of said defendant and appellant, Ben A. Bost, and it appearing that said Bill of Exceptions is correct in all respects, and contains all the evidence of said cause, and good cause appearing therefor, said Bill of Exceptions is hereby settled, allowed and authenticated as and for the Bill of Exceptions of said defendant and appellant Ben A. Bost, for use on appeal in said action.

Dated, March 8, 1938.

A. F. ST. SURE

United States District Judge

[Endorsed]: Lodged Feb. 17, 1938. Filed Mar. 8, 1938. [128]

[Title of District Court and Cause.]

NOTICE OF APPEAL BY DEFENDANT
BEN BOST

Name and address of appellant: Ben Bost, Nevada City, Calif.

Names and addresses of appellant's attorneys:
James M. Hanley, 210 Post St., San Francisco, California.

Ray T. Coughlin and Robert A. Zarick, 507 Bryte Bldg., Sacramento, California.

Offenses: Section 80 of Title 18 of the United States Code—5 counts.

Date of judgment: December 3, 1937.

Brief description of judgment: Five years in U. S. Penitentiary on five counts, running concurrently, and on first count also a fine of Five Thousand Dollars.

Name of prison where now confined if not on bail: San Francisco County Jail No. 1.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

Dated: December 9, 1937.

BEN BOST
Appellant

Grounds of Appeal

(1) That neither of the five counts of the indictment upon which defendant was convicted and sentenced states facts sufficient to constitute an offense

by Appellant against the laws of the United States of America.

(2) That neither of the five counts of the Indictment states facts sufficient to constitute an offense by Appellant under Section 80, of Title 18, United States Code, for the following reasons, to wit: [129]

(a) That said counts and each of them fail to allege or show that Appellant filed, or caused to be filed, a false, or any, affidavit or other document with the United States Mint or any other agency or department of the United States of America.

(b) That said counts and each of them fail to allege or show that Appellant in any manner whatsoever cheated or defrauded the United States of America, or any agency or department thereof, or caused the same any pecuniary loss.

(c) That said counts and each of them fail to allege or show that Appellant in any manner concealed or covered up from the United States of America, or any agency or department thereof, any material fact, or any fact, within its jurisdiction.

(d) That the purported regulation promulgated by the Secretary of the Treasury, which are the foundation of and referred to in said five counts of the indictment, were and are null and void because they constitute an attempt by said executive official to exercise legislative power and functions.

(e) That the Gold Reserve Act of 1934 is unconstitutional and void for the reason, among others, that it attempts to make an unlawful delegation of legislative power to the Secretary of the Treasury of the United States of America.

(f) That the facts alleged in said five counts and each of them show, at the most, a violation of the regulations issued under the Gold Reserve Act of 1934, which provides its own penalties, and hence this case is not within the purview of Section 80 of Title 18, U. S. C. A.

(g) That said five counts and each of them were and are fatally uncertain and insufficient in various material respects.

(3) That the Court erred in overruling appellant's [130] demurrer to said indictment and each of the five counts thereof.

(4) That the evidence is insufficient as a matter of law to sustain the verdict against appellant on the five counts in said indictment upon which judgment was entered.

(5) That the evidence is insufficient as a matter of law to sustain the verdict and judgment against appellant on any of the counts to which he has been sentenced.

(6) That the court erred in denying Appellant's motion for a directed verdict of not guilty on each of the counts in the indictment upon which he was convicted at the conclusion of the entire evidence.

(7) That the court erred in denying Appellant's motion in arrest of judgment in this case.

(8) That the court erred in denying Appellant's motion for a new trial.

(9) That the court erred in admitting and refusing evidence at the trial of said case, over the objection of Appellant, including the following:

(a) The court admitted, over the objection of Appellant, evidence as to acts and events, and purported offenses, occurring after the period covered by the indictment which evidence was not within the issues raised by the plea of not guilty to the five counts alleged in the indictment, and were wholly beyond and foreign to said issues.

(b) The Court erred in admitting, over the objection of Appellant, evidence concerning and relating to various gold transactions both before and after the period covered by the indictment in this case, and with which Appellant was not at all connected, and which said evidence was not within the issues raised by the plea of not guilty to each and every count in the indictment.

RAY T. COUGHLIN

ROBERT A. ZARICK

JAMES M. HANLEY

Attorneys for Appellant

Ben Bost [131]

(Admission of service)

[Endorsed]: Filed Dec. 9, 1937. [132]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now Ben A. Bost, defendant and appellant in above-entitled matter and makes and files

the following assignment of errors herein upon which he will apply for a reversal of judgment and sentence heretofore made in said cause against him, and which errors, and each of them, are to the great detriment, injury and prejudice of said defendant and appellant, and in violation of the rights conferred upon him by law; and said appellant says that in the record and proceedings in the above-entitled cause, upon the hearing and determination thereof in the Southern Division of the United States District Court for the Northern District of California, there is manifest error, in this, to wit:

I.

The Court erred in overruling appellant's demurrer to the indictment in this cause and each count thereof for the following reasons, among others, to wit:

1. The facts set forth in the First Count do not state facts sufficient to constitute an offense against the United States.

2. That it does not appear in said Indictment, in the First Count thereof, nor can it be ascertained therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a violation [133] of the Gold Reserve Act of 1934.

3. That it does not appear in said First Count of the Indictment, nor can it be ascertained therefrom how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof.

4. That it does not appear in said Indictment, in the First Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or officer thereof, or any corporation in which the United States of America is a stockholder.

5. That it does not appear in said Indictment, in the First Count thereof, that this defendant made or caused to be made or presented or caused to be presented any claim for payment or approval to or by any person or officer of the civil, military or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder.

6. That it does not appear in said Indictment, in the First Count thereof, that this defendant made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

Demurring to the Second Count of said Indictment, defendant specifies as follows:

1. The facts set forth in the Second Count do not state facts sufficient to constitute an offense against the United States.

2. That it does not appear in said Indictment, in the Second Count thereof, nor can it be ascertained therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a [134] violation of the Gold Reserve Act of 1934.

3. That it does not appear in said Second Count of the Indictment, nor can it be ascertained therefrom how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof.

4. That it does not appear in said Indictment, in the Second Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or officer thereof, or any corporation in which the United States of America is a stockholder.

5. That it does not appear in said Indictment, in the Second Count thereof, that this defendant made or caused to be made or presented or caused to be presented any claim for payment or approval to or by any person or officer in the civil, military or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder.

6. That it does not appear in said Indictment, in the Second Count thereof, that this defendant made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

Demurring to the Third Count of said Indictment, defendant specifies as follows:

1. The facts set forth in the Third Count do not state facts sufficient to constitute an offense against the United States.

2. That it does not appear in said Indictment, in the Third Count thereof, nor can it be ascertained

therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a violation of the Gold Reserve Act of 1934. [135]

3. That it does not appear in said Third Count of the Indictment, nor can it be ascertained therefrom how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof.

4. That it does not appear in said Indictment, in the Third Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or Officer thereof, or any corporation in which the United States of America is a stockholder.

5. That it does not appear in said Indictment, in the Third Count thereof, that this defendant made or caused to be made or presented or caused to be presented any claim for payment or approval to or by any person or officer in the civil, military or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder.

6. That it does not appear in said Indictment, in the Third Count thereof, that this defendant made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

Demurring to the Fourth Count of said Indictment, defendant specifies as follows:

1. The facts set forth in the Fourth Count do not state facts sufficient to constitute an offense against the United States.

2. That it does not appear in said Indictment, in the Fourth Count thereof, nor can it be ascertained therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a violation of the Gold Reserve Act of 1934. [136]

3. That it does not appear in said Fourth Count of the Indictment, nor can it be ascertained therefrom how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof.

4. That it does not appear in said Indictment, in the Fourth Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or Officer thereof, or any corporation in which the United States of America is a stockholder.

5. That it does not appear in said Indictment, in the Fourth Count thereof, that this defendant made or caused to be made or presented or caused to be presented any claim for payment or approval to or by any person or officer in the civil, military or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder.

6. That it does not appear in said Indictment, in the Fourth Count thereof, that this defendant

made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

Demurring to the Fifth Count of said Indictment, defendant specifies as follows:

1. The facts set forth in the Fifth Count do not state facts sufficient to constitute an offense against the United States.

2. That it does not appear in said Indictment, in the Fifth Count thereof, nor can it be ascertained therefrom, whether this defendant is charged with a violation of the provisions of Section 80 of Title 18 of the United States Criminal Code, or a violation of the Gold Reserve Act of 1934. [137]

3. That it does not appear in said Fifth Count of the Indictment, nor can it be ascertained therefrom how or in what manner this defendant attempted to or did defraud the Government of the United States or any Department thereof.

4. That it does not appear in said Indictment, in the Fifth Count thereof, that this defendant presented any claim upon or against the Government of the United States, or any Department or Officer thereof, or any corporation in which the United States of America is a stockholder.

5. That it does not appear in said Indictment, in the Fifth Count thereof, that this defendant made or caused to be made or presented or caused to be presented any claim for payment or approval to or by any person or officer in the civil, military or

naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder.

6. That it does not appear in said Indictment, in the Fifth Count thereof, that this defendant made, caused to be made or presented or caused to be presented a claim to any person or officer of the Government of the United States having authority to allow and approve such claim.

II.

That the Court erred in admitting the following testimony over the objection and exception of the defendant:

“Mr. McWilliams: I desire to offer the map in evidence and ask to have it marked as Government’s Exhibit.

“Mr. Coughlin: Might I inquire the purpose?

“Mr. McWilliams: Yes, it is for the purpose of showing that neither on this map nor any other official map is there any Cougar Canon, although there are many canons and other places and towns and topographical points indicated on the map, but no Cougar Canon. [138]

“Mr. Coughlin: That is objected to on the ground that no proper foundation has been laid for the map.

“The Court: You will have to proceed further and lay a foundation.

“Mr. McWilliams: Q. Will you state what you mean when you say that this is an official map in your department?

“A. That is a map that we use for all of our demonstration work in the National Forest, and was prepared in San Francisco from U. S. Surveys, General Land Office Surveys, and our own surveys, it was compiled from all different sources into one map.

“The Court: Who compiled it?”

“A. It was done under my supervision by one of the draftsmen.

“Q. It is correct?”

“A. It is as far as the information we had.

“Q. Where did you get your information?”

“A. From the United States Geological Survey, the General Land Office Survey, and our own surveys, timber surveys.

“The Court: Is that all?”

“Mr. McWilliams: Yes.

“Mr. Coughlin: May I further urge the objection that it is hearsay?”

“The Court: Overruled.

“Mr. McWilliams: May it be marked as United States Exhibit 1?”

“The Court: Yes.

“Mr. Coughlin: We note an exception.

“(The map was marked U. S. Exhibit 2.)”

III.

That the Court erred in admitting the following testimony over the objection and exception of the defendant:

“Mr. McWilliams: I desire to offer these in evidence as one exhibit.

· “Mr. Coughlin: To which we object, if your Honor please, on [139] the ground that the proper foundation has not been laid, that they are hearsay.

“The Court: Overruled.

“Mr. Coughlin: Exception.

“(The maps were marked ‘U. S. Exhibit 3.’)”

IV.

That the court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. What did he state, if anything, as to whether he knew these men?

“Mr. Coughlin: To which we object on the ground that——

“Mr. McWilliams: I will withdraw the question. Proceed with the conversation.

“Mr. Coughlin: I am going to object to this line of testimony on the ground that the corpus delicti has not been proven.

“The Court: Overruled.

“Mr. Coughlin: May I have an exception?

“The Court: Yes.”

V.

That the court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. State the conversation that occurred on that occasion?

“Mr. Coughlin: The same objection.

“The Court: Overruled.

“Mr. Coughlin: Note an exception.”

VI.

The Court erred in admitting the following testimony over the objection and exception of the defendant:

“Mr. Coughlin: In order that I do not interrupt may it be understood that my objection goes to this entire line of testimony? [140]

“The Court: Yes.

“Mr. Coughlin: On the ground the corpus delicti has not been proven.

“The Court: Yes. Of course, if it is not connected up you can move to strike it out.

“Mr. McWilliams: Yes, that is stipulated to.”

VII.

That the court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. When and where and with whom did you make such an investigation?

“A. Well, on August 18, 1936, I went to the office of Mr. DeWitt Nelson, superintendent of the Tahoe National Forest in Nevada City and searched the maps and records in his office, and questioned Mr. Nelson, and questioned certain of his rangers regarding Cougar Canon, or Lucky Gravel mining claim, and found no information.

“Mr. Coughlin: We object to this and ask that the answer be stricken on the ground it is hearsay.

“Mr. McWilliams: I submit it is not hearsay. It is direct information to the point that there was no such place given.

“The Court: Denied.

“Mr. Coughlin: May I have an exception, your Honor?”

VIII.

That the court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. Did you make inquiries during the course of that trip?”

“A. Yes, we interviewed the road supervisor, McFadden, I believe his name was, at Forest Hill, who stated he was very familiar with all of that territory——

“Mr. Coughlin: I submit that this is hearsay testimony and I ask that the answer be stricken out. [141]

“Mr. McWilliams: I submit it comes in under that exception which permits the result of searches to be admitted. We have authorities, if your Honor desires them.

“Mr. Coughlin: He is testifying now to what someone else told him.

“Mr. McWilliams: I have that in mind.

“Mr. Coughlin: That is not admissible.

“Mr. McWilliams: I anticipated that objection and looked up the law, and we have the authorities if necessary.

“Mr. Coughlin: May I have an exception?”

“The Court: Yes, the objection is overruled.”

IX.

That the Court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. Did you ever hear of Hans Hensen, G. A. Swissler or Larry Larsen?”

“A. No.

“Mr. Coughlin: To which we object on the ground it is immaterial, irrelevant, and incompetent, and calls for the opinion of the witness, and is hearsay.

“The Court: Overruled.

“Mr. Coughlin: Exception.”

X.

That the Court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. Did you ever hear of Hans Hensen or G. A. Swissler, or Larry Larsen as miners in that area?”

“Mr. Coughlin: We will interpose the same objection as we have heretofore.

“The Court: Overruled.

“Mr. Coughlin: Note an exception.” [142]

XI.

That the Court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. Are you familiar also with other mining activities in the vicinity where quantities of gravel have been handled besides the quantity that you are particularly familiar with?”

“A. Well, during my time there has not been very much gravel mining outside of our own.

“Mr. Coughlin: We ask that the answer be stricken out on the ground it is not responsive.

“The Court: Denied.

“Mr. Coughlin: Exception.”

XII.

That the Court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. Have you ever run across a man by the name of Hans Hensen, G. A. Swissler, or Larry Larsen, miners in that area?

“A. No.

“Mr. Coughlin: Just a moment. We object to that on the ground it calls for a conclusion or opinion as to whether he ever run across them. There is no foundation laid here to show that this man may have known them.

“The Court: He has lived on the Divide all his life. Overruled.

“Mr. Coughlin: Exception.”

XIII.

That the Court erred in admitting the following testimony over the objection and exception of defendant:

“Q. What was the character of the establishment that was being operated by him at that time in Nevada City?

“Mr. Coughlin: To which we object on the ground it is immaterial, irrelevant, and incompetent, no time, place, or any- [143] thing else fixed.

“The Court: Overruled.

“Mr. Coughlin: Exception.”

XIV.

That the Court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. Do you know why the grinder is used?

“A. I do.

“Q. Do you know—‘Yes’ or ‘No’?

“A. Yes.

“Q. Will you tell the jury?

“A. The grinder is used to grind quartz rock.

“Q. What kind of quartz rock?

“A. A Quartz rock which bears the gold.

“Mr. Coughlin: I object to that.

“The Court: Overruled.

“Mr. Coughlin: Exception.”

XV.

That the Court erred in admitting the following testimony over the objection and exception of the defendant:

“Q. In your experience over the years, will you state how many gravel mines you have run across or become familiar with that run as high in gold as .56 ounces per cubic yard?

“Mr. Coughlin: I object to that. I do not see the relevancy of it.

“The Court: Overruled.

“Mr. Coughlin: Exception.

“A. I don’t recall any.”

XVI.

That the Court erred in denying appellant's motion that the Court instruct the jury at this time to return a verdict of not guilty on the ground that the evidence is insufficient to sustain any verdict save and except a verdict of not guilty. [144]

XVII.

That the Court erred in admitting the following testimony over the objection and exception of the defendant:

"Q. Did you know that in the year 1931 he endeavored to get his gold buyer's license, required under the State law, renewed, and that as a result of the protests and the testimony that was given of irregularities in his method of conducting business that his application was denied?"

"Mr. Coughlin: To which we object on the ground it is not proper cross-examination, and assuming a fact not in evidence.

"The Court: Overruled.

"Mr. Coughlin: Exception."

XVIII.

That the Court erred in denying appellant's motion for a directed verdict of not guilty by defendant at the conclusion of the entire evidence, which said ruling was duly excepted to by appellant. Said Court erred in this, because there is not sufficient evidence to sustain any other verdict save and except a verdict of not guilty.

XIX.

That the Court erred in denying appellant's motion for a new trial, which said ruling was duly excepted to by appellant. Said Court erred in this, because of all of the aforesaid reasons, and further because of errors of law at the trial of said cause.

Wherefore, the said defendant and appellant, George A. Bost, prays that by reason of the errors aforesaid the judgment and sentence imposed upon him in this cause be reversed and held for naught.

Respectfully submitted,

RAY T. COUGHLIN

JAMES M. HANLEY

Attorneys for Defendant and
Appellant. [145]

Service and receipt of copy of the foregoing assignment of errors this 17th day of February, 1938, is hereby acknowledged.

F. J. HENNESSY

United States Attorney.

By ROBERT McWILLIAMS

Attorney for Plaintiff.

[Endorsed]: Filed Feb. 17, 1938. [146]

[Title of District Court and Cause.]

STIPULATION RE EXHIBITS

It is hereby stipulated by and between the plaintiff in the above entitled cause and the defendant and appellant Ben Bost, through and by their re-

spective counsel, that an order may be made by this Court certifying all of the original exhibits not set out in full in the Bill of Exceptions, as a part thereof, and as a part of the record on said appeal, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, February 15th, 1938.

FRANK J. HENNESSY

United States Attorney

By ROBERT McWILLIAMS

Attorneys for Appellee,

JAMES M. HANLEY

RAY T. COUGHLIN

Attorneys for Appellant.

[Endorsed]: Filed Feb. 17, 1938. [147]

[Title of District Court and Cause.]

ORDER RE EXHIBITS

Pursuant to stipulation heretofore entered into by and between the plaintiff and the defendant and appellant Ben Bost, in the above entitled cause, that the exhibits not set out in full in the Bill of Exceptions filed herein be certified to the United States Circuit Court of Appeals for the Ninth Circuit, as a part hereof; and good cause appearing therefore,

It is therefore Ordered that the Clerk of this Court be, and hereby is, directed to certify to the United States Circuit Court of Appeals for the

Ninth Circuit, all such original exhibits herein which are not incorporated in full in said Bill of Exceptions, as a part hereof.

Dated, February 17, 1938.

A. F. ST. SURE

Judge of said Court.

[Endorsed]: Filed Feb. 17, 1938. [148]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of said Court:

Please issue a Transcript of the record to the Circuit Court of Appeals in the above entitled cause in connection with the appeal of the defendant Ben A. Bost, and include therein the following papers and orders, with all filing and other endorsements thereon, to wit:

1. Indictment.
2. Statement of Docket Entries.
3. Arraignment and plea of defendant.
4. Demurrer of defendant, with order overruling the same.
5. The Judgment and sentence of the Court as to the defendat, and the verdict as to defendant.
6. Motion for new trial and order denying the same.
7. Minutes showing motion in arrest of judgment and order denying the same. [149]

8. Stipulation and order for extension of time for filing and settlement of Bill of Exceptions and filing Assignment of Errors;

9. Order of Circuit Court of Appeals for Extension of Time for filing and Settlement of Bill of Exceptions and Assignment of errors.

10. Stipulation and order for certification of Exhibits to the United States Circuit Court of Appeals.

11. Bill of Exceptions, and Order of Court approving and settling said Bill of Exceptions.

12. Assignment of Errors.

13. Notice of Appeal by defendant.

14. This Praecipe.

In preparing the foregoing record, please eliminate the title of court and cause.

Dated, April 20, 1938.

JAMES M. HANLEY

RAY T. COUGHLIN

Attorneys for Defendant.

Service of the above admitted this 21st day of April, 1938.

F. J. HENNESSY

United States Attorney

By ROBT. McWILLIAMS

Deputy United States Attorney.

[Endorsed]: Filed Apr. 21, 1938. [150]

[Title of District Court and Cause.]

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV.

(To accompany duplicate notice of appeal to the United States Circuit Court of Appeals.)

1. Indictment for violation of 18 USCA, Sec. 80. (False affidavit—Gold Reserve Act) filed March 30, 1937.
2. Arraignment May 1, 1937.
3. Plea to indictment May 18, 1937.
4. Motion to withdraw plea of guilty denied _____, 19.....
5. Trial by jury, Nov. 23, 24 & 26, 1937.
6. Verdict Nov. 26, 1937.
7. Judgment—(with terms of sentence) five years and \$5000.00 fine on count one, five years on each of counts 2, 3, 4 & 5 to run concurrently, entered Dec. 3, 1937.
8. Notice of appeal filed Dec. 9, 1937. [151]

[Title of District Court.]

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 151 pages, numbered from 1 to 151, inclusive, contain a

full, true, and correct transcript of the records and proceedings in the case entitled United States of America, Plaintiff, vs. Ben A. Bost, Defendant, No. 25961-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$12.35 and that the said amount has been paid to me by the Attorneys for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 4th day of May, A. D. 1938.

[Seal]

WALTER B. MALING

Clerk.

J. P. WELSH

Deputy Clerk. [152]

[Endorsed]: No. 8768. United States Circuit Court of Appeals for the Ninth Circuit. Ben A. Bost, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed September 29, 1938.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.